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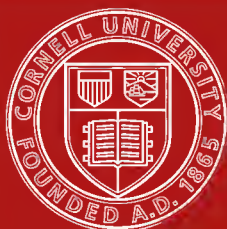
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Internal revenue laws in force January 1



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INTERNAL REVENUE LAWS

IN FORCE JANUARY 1, 1900,

WITH AN APPENDIX CONTAINING LAWS OF A GENERAL NATURE AND
MISCELLANEOUS PROVISIONS APPLICABLE TO THE ADMIN-
ISTRATION OF THE INTERNAL REVENUE LAWS.

Compiled under the direction
OF THE
COMMISSIONER OF INTERNAL REVENUE.

U.S. Congress Acts and Laws Special Subjects.

· **COMPILATION OF 1900.**

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1900.

TREASURY DEPARTMENT,
Document No. 2157.
Internal Revenue.

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INTRODUCTION.

This compilation contains the internal-revenue laws in force January 1, 1900. The last compilation was published in 1894. Since that date there have been many changes in the laws, making a new compilation desirable.

The United States Supreme Court having decided the income tax unconstitutional, the chapter on that subject in the old compilation is obsolete.

The most notable additions to the laws relating to internal revenue were made by the act entitled an "Act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898, known as the "War-Revenue Act."

The principal changes made by this act were as follows:

An additional tax of \$1 per barrel was imposed on fermented liquors, the increased rate to take effect the day succeeding the passage of the act.

Brewers were allowed $7\frac{1}{2}$ per cent discount on stamps purchased.

Special taxes after July 1, 1898, were imposed on bankers, and various other occupations.

An additional tax of 6 cents per pound was imposed on tobacco and snuff.

Stamp duties to take effect July 1, 1898, were imposed upon documents and instruments, passage tickets, telegraphic dispatches, etc., and on medicinal articles, cosmetics, chewing gum, and wines.

A tax of one-fourth of one per cent annually was imposed on gross receipts of persons, firms, companies, and corporations engaged in refining petroleum and sugar, or owning or controlling any pipe line for transporting oil or products in excess of \$250,000.

A tax was imposed on legacies, and distributive shares of personal property.

Mixed flour was made subject to an internal revenue tax, and manufacturers, packers, and repackers were required to pay a special tax.

The body of this work consists of Title XXXV of the Revised Statutes, with amendments and subsequent acts incorporated in their appropriate places, the obsolete and repealed sections being omitted.

Where portions of sections are printed in italics, it indicates that the words so printed are amendments. Words omitted are indicated by

asterisks. The feature in previous compilations of introducing section numbers in brackets for convenience of reference is retained; for instance, [sec. 3153*a*.] This indicates that a new provision of law has been enacted since the Revised Statutes, amendatory of, or additional to, section 3153, which seems to belong, in its proper order, immediately after it.

The references, in previous compilations, to decisions of the courts, and the opinions of the Attorneys-General, and of this office, bearing upon the construction of the sections which they follow, and explanatory thereof, are retained with additions, as are also the references made in notes at the close of sections to other sections of the law relating to the same matter or which modify or affect the sections which they follow.

The plan adopted in previous compilations in the arrangement of the Appendix—viz, that of grouping the sections and acts relating to the same subject, instead of preserving the sequence according to the enumeration in the Revised Statutes—is followed in the present compilation.

G. W. WILSON,
Commissioner.

ABBREVIATIONS.

Abb. (U. S.)	Abbott's United States Circuit and District Court Reports.
Am. Eng. Ency. Law	American and English Encyclopedia of Law.
Ben	Benedict's United States District Court Reports.
Biss. (U. S.)	Bissell, United States Circuit Court Reports.
Blatch	Blatchford's United States Circuit Court Reports.
Bond (U. S.)	Bond's United States Circuit and District Court Reports.
Cal	California Reports.
Cliff. (U. S.)	Clifford's United States Circuit Court Reports.
Conn.	Connecticut Reports.
Comp. Dec	Comptroller's Decisions.
Ct. Clms.	United States Court of Claims Reports.
Cranch (U. S.)	Cranch's United States Supreme Court Reports.
Dall (U. S.)	Dallas United States Reports.
Deady (U. S.)	Deady's United States Circuit and District Court Reports.
Dill. (U. S.)	Dillon's United States Circuit Court Reports.
Fed. Rep.	The Federal Reporter.
Ga	Georgia Reports.
Gray (Mass.)	Gray's Massachusetts Reports.
Hughes (U. S.)	Hughes' United States Circuit and District Court Reports.
Int. Rev. Rec	Internal Revenue Record.
Lawrence Dec.	Decisions of William Lawrence, First Comptroller of the Treasury.
Low	Lowell's United States Circuit and District Court Reports.
Mackey (D. C.)	Mackey's District of Columbia Reports.
Mass	Massachusetts Reports.
N. C.	North Carolina Reports.
N. Y.	New York Reports.
Op. Atty. Gen.	United States Attorney-General's Opinions.
Otto (U. S.)	Otto's United States Supreme Court Reports.
Penn.	Pennsylvania Reports.
Pet. (U. S.)	Peter's United States Supreme Court Reports.
Saw. or Sawy. (U. S.)	Sawyer's United States Circuit and District Court Reports.
Reg	Internal Revenue Regulations.
R. S.	United States Revised Statutes.
Stat.	United States Statutes at Large.
Treas. Dec	Treasury Decisions.
U. S.	United States Supreme Court Reports.
Wall. (U. S.)	Wallace's United States Supreme Court Reports.
Wash. Law Rep	Washington Law Reporter.
W. Va.	West Virginia Reports.
Wood (U. S.)	Wood's United States Circuit Court Reports.
Woolw.	Woolworth Reports.

COMMISSIONERS OF INTERNAL REVENUE

SINCE THE

ORGANIZATION OF THE INTERNAL REVENUE OFFICE IN 1862.

GEORGE S. BOUTWELL, of Massachusetts, from July 17, 1862, to March 3, 1863, both dates inclusive.

JOSEPH J. LEWIS, of Pennsylvania, from March 18, 1863, to June 30, 1865.

WILLIAM ORTON, of New York, from July 1, 1865, to October 31, 1865.

EDWARD A. ROLLINS, of New Hampshire, from November 1, 1865, to March 10, 1869.

COLUMBUS DELANO,¹ of Ohio, from March 11, 1869, to January 2, 1871.

John W. Douglass, of Pennsylvania, was Acting Commissioner from November 1, 1870, to January 2, 1871.

ALFRED PLEASONTON, of New York, from January 3, 1871, to August 8, 1871.

JOHN W. DOUGLASS, of Pennsylvania, from August 9, 1871, to May 14, 1875.

DANIEL D. PRATT, of Indiana, from May 15, 1875, to July 31, 1876.

GREEN B. RAUM, of Illinois, from August 2, 1876, to April 30, 1883.

Henry C. Rogers, of Pennsylvania (Acting Commissioner), from May 1, 1883, to May 10, 1883.

John J. Knox, of Minnesota (Acting Commissioner), from May 11, 1883, to May 20, 1883.

WALTER EVANS, of Kentucky, from May 21, 1883, to March 19, 1885.

¹ Mr. Delano was appointed and commissioned Secretary of the Interior November 1, 1870. He did not resign the office of Commissioner of Internal Revenue, and therefore became the legal holder of two offices, Commissioner of Internal Revenue and Secretary of the Interior, as he might legally do, for the duties of the two offices are distinct and compatible. (*Converse v. United States*, 21 How., 468; *United States v. Saunders*, 120 U. S., 126.)

He continued to hold the office of Commissioner of Internal Revenue until his successor was appointed and qualified, but was absent from the internal-revenue office and discharged the duties and received the salary of the office of Secretary of the Interior and of that office only.

Deputy Commissioner Douglass was acting Commissioner of Internal Revenue in the absence of Commissioner Delano (15 Stat., 168), and continued to be so until Alfred Pleasonton was commissioned as Commissioner of Internal Revenue, January 3, 1871.

JOSEPH S. MILLER, of West Virginia, from March 20, 1885, to March 20, 1889.

JOHN W. MASON, of West Virginia, from March 21, 1889, to April 18, 1893.

JOSEPH S. MILLER, of West Virginia, from April 19, 1893, to November 26, 1896.

WILLIAM ST. JOHN FORMAN, of Illinois, from November 27, 1896, to December 31, 1897.

NATHAN BAY SCOTT, of West Virginia, from January 1, 1898, to February 28, 1899.

GEORGE W. WILSON, of Ohio, from March 1, 1899.

INTERNAL REVENUE TAXATION.

The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States. (Constitution of the United States, art. 1, sec. 8; *McGuire v. The Commonwealth*, 3 Wall., 387; *License Tax Cases*, 5 Wall., 462, 6 Int. Rev. Rec., 36; *Pervear v. The Commonwealth*, 5 Wall., 533; *The Collector v. Day*, 11 Wall., 113, 13 Int. Rev. Rec., 141; *United States v. Singer*, 15 Wall., 111, 17 Int. Rev. Rec., 9; *Scholey v. Rew*, 23 Wall., 331.)

A general power is given to Congress to lay and collect taxes of every kind or nature without any restraint, except only on exports; but two rules are prescribed for their government, namely, uniformity and apportionment. Three kinds of taxes, to wit, duties, imposts, and excises by the first rule, and capitation, or other direct taxes, by the second rule. (*Hylton v. The United States*, 3 Dall., 171-173.)

Direct taxes must be apportioned, while indirect taxes must be uniform throughout the United States. (Income tax cases, 157 U. S., 429; 158 *id.*, 601; *Nicol v. Ames*, 173 U. S., 509.)

A tax on bank circulation is not a direct tax, and may be laid without apportionment. (*Springer v. United States*, 102 U. S., 586, 27 Int. Rev. Rec., 78; *Veazie Bank v. Fenno*, 8 Wall., 533, 10 Int. Rev. Rec., 195.)

A tax upon the business of an insurance company is not a direct tax, but a duty or excise. (*Pacific Insurance Company v. Soule*, 7 Wall., 433.)

No State court can by injunction or otherwise prevent Federal officers from collecting Federal taxes. The Government of the United States within its sphere is independent of State action. (*Keely v. Sanders*, 99 U. S., 443.)

The same principle which denies to a State power to raise a revenue by taxation on Federal property, or sources of revenue, or means of carrying on its duties, forbids taxation of State revenue for Federal purposes. (12 Op. Atty. Gen., 282.)

As the States can not tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held the United States have no power under the Constitution to tax either the instrumentalities or the property of a State. (*Pollock v. Trust Co.*, 157 U. S., 584.)

A municipal corporation is a portion of the sovereign power of the State, and is not subject to taxation by Congress upon its municipal revenues. (*United States v. Railroad Co.*, 17 Wall., 322.)

CONSTRUCTION OF STATUTES.

Statutes *in pari materia* are to be construed together, and repeals by implication are not favored if the acts can reasonably stand together.

(Harrington's Distilled Spirits, 11 Wall., 356, 13 Int. Rev. Rec., 193; United States v. 100 Barrels of Spirits, 12 *ibid.*, 153; United States v. Cook County National Bank, 25 *ibid.*, 266.)

Legislative intention is the guide to true judicial interpretation. (United States v. 100 Barrels of Spirits, 12 Int. Rev. Rec., 153.)

A well-settled rule of interpretation is that a legislative act is to be interpreted according to the intention of the legislature apparent upon its face. (Wilkinson v. Deland, 2 Pet., 627.)

Revenue laws are not, like penal acts, to be construed strictly in favor of the defendants. They are rather to be regarded as remedial in their character, passed to promote the public good, and should be so construed as to carry out the intention of the legislature in passing them. (Cliquot's Champagne, 3 Wall., 114; 4 Int. Rev. Rec., 58; United States v. 28 Casks of Wine, 7 Int. Rev. Rec., 4; United States v. 36 Barrels of High Wines, 12 *ibid.*, 40; United States v. 100 Barrels of Spirits, 12 *ibid.*, 153; United States v. Stowell, 133 U. S., 1; 36 Int. Rev. Rec., 30.)

As a general rule the construction of these statutes must be such as is most favorable to their enforcement. There is no liberal interpretation in favor of the individual to be indulged in. (18 Op. Atty. Gen., 246; 31 Int. Rev. Rec., 246.) They are to be construed liberally to carry out the purposes of their enactment, and the rule of construction applicable to statutes generally, that what is implied in them is as much a part of the enactment as what is expressed, holds in regard to them. (United States v. Hodson (1870), 10 Wall., 395.)

They should be construed with reasonable fairness to the citizen. (United States v. Distilled Spirits, 10 Blatch., 428.)

Statutes should receive a sensible construction, such as will effectuate the legislative intention, and avoid, if possible, an unjust or absurd construction. (*In re Chapman*, 166 U. S., 661.)

Statutes are to receive a reasonable construction, and doubtful words and phrases are to be construed, if possible, so as not to produce mischievous results. But when the words are plain and unambiguous, there is no room for construction, and nothing is left for the court but to give them their full effect. (The Samuel E. Spring (1886), 27 Fed. Rep., 776.)

Statutes should be so construed, if practicable, that one section will explain and support and not defeat or destroy another section. (Bernier v. Bernier, 147 U. S., 242.)

It is a settled rule that where there are two consistent acts relating to the same subject, effect is to be given to both of them. (Chicago, etc., v. United States, 127 U. S., 406; Landram v. United States, 118 U. S., 81; 32 Int. Rev. Rec., 151.)

The words of the statute are to be taken in the sense in which they will be understood by that public in which they are to take effect. Science and skill are not required in their interpretation, except where scientific or technical terms are used.

The liability of an instrument to stamp duty, as well as the amount of such duty, is determined by the form and face of the instrument, and can not be affected by proof of facts outside of the instrument itself. (United States v. Isham, 17 Wall., 496; 19 Int. Rev. Rec., 84.)

Laws of doubtful or double meaning should not be too harshly construed. (United States v. 1,412 Gallons of Distilled Spirits, 17 Int. Rev. Rec., 86.)

Courts are not at liberty, by construction or legal fiction, to include subjects of taxation not within the terms of the law. (United States v. Watts, 1 Bond, 580; 1 Int. Rev. Rec., 17.)

Duties are never imposed on the citizens upon vague or doubtful interpretations. (*Hartranft v. Weigmann*, 121 U. S., 609, and cases there cited.)

Punctuation no part of the statute. (*Hammock v. Loan and Trust Company*, 105 U. S., 77, 84, 85.)

It is the duty of the court to study the whole statute, its policy, its spirit, its purpose, its language, and, giving to the words used their obvious and natural import, to read the act with these aids in such way as will best effectuate the intention of the legislature. (*United States v. 100 Barrels Spirits*, 12 Int. Rev. Rec., 154.)

Words spoken by members in debate, or the motives of members, not to be considered in construing statutes; but courts in construing a statute may, with propriety, recur to the history of the times when it was passed. (*United States v. Union Pacific Railroad Company*, 91 U. S., 72-79.)

In case of ambiguity in a statute contemporaneous and uniform executive construction is regarded as decisive. (*Brown v. United States*, 113 U. S., 568; also decisions cited by Attorney-General in letter to Secretary of Treasury, November 17, 1885, 31 Int. Rev. Rec., 382.)

Where the language of a series of statutes is dubious, and open to different interpretations, the construction put upon them by the Executive Department charged with their execution has great and generally controlling force with the court. (*St. Paul, Minneapolis, etc., Railway Co. v. Phelps*, 137 U. S., 528; see 19 Op. Atty. Gen., 177.)

A construction of a doubtful or ambiguous statute by the Executive Department charged with the execution, in order to be binding upon the courts, must be long continued and unbroken. (*Merritt v. Cameron*, 137 U. S., 542.)

It is a rule well established that the construction given to a statute by those charged with the duty of executing it will be given great weight by the courts if the true construction be doubtful (*United States v. Hill*, 120 U. S., 169, and cases cited, p. 182); but this rule has no application where the statute is not ambiguous or where it will not bear the interpretation put upon it by the executive officers. (*Swift Company v. United States*, 105 U. S., 691, 695; *United States v. Graham*, 110 U. S., 219; *United States v. Tanner*, 147 U. S., 661; *United States v. Alger*, 152 U. S., 384, 397.)

The same statute may be in part constitutional and in part unconstitutional; and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected. Unless it be impossible to avoid it, a general revenue statute should never be declared inoperative in all its parts because a particular part relating to a distinct subject may be invalid. (*Field v. Clark* (1892), 143 U. S., 649; 38 Int. Rev. Rec., 285.)

When an act of Congress is claimed to be unconstitutional, the presumption is in favor of its validity, and it is only when the question is free from any reasonable doubt that courts should hold an act in violation of that fundamental instrument upon which all the powers of the Government rest. (*Nicol v. Ames*, 173 U. S., 509.)

TIME WHEN AN ACT TAKES EFFECT.

A law of Congress which contains no provision as to the time when it shall take effect commences and takes effect as a law from the moment it receives the approbation of the President. As a general rule, it is not competent to go into the division of a day. (3 Op. Atty. Gen., 82.)

For most purposes the law regards the entire day as an indivisible unit. But when the priority of one legal right over another, depending on the order of events occurring on the same day, is involved, this rule is necessarily departed from. (*National Bank v. Burkhardt*, 100 U. S., 686.)

When necessary to determine conflicting rights courts of justice will take cognizance of the fractions of a day. (*Louisville v. Savings Bank* (1881), 104 U. S., 469.)

The act of March 3, 1875, took effect from the time it was approved and not at the commencement of the day. (*Salmon v. Burgess*, 97 U. S., 381; 25 Int. Rev. Rec., 31.)

When the act of August 28, 1894, went into effect. (*Burr v. United States*, 159 U. S., 78.)

The act of July 24, 1897, became a law only from the moment of its approval by the President, which was six minutes past 4 o'clock p. m. (Washington time) on July 24, 1897. (*United States v. Iselin*, 87 Fed. Rep., 194; *United States v. Stoddard*, 89 Fed. Rep., 699.) Affirmed by the U. S. Circuit Court of Appeals. (91 Fed. Rep., 1005.)

The Government, on the advice of the Attorney-General, acquiesced in said decisions without seeking to prosecute any appeal to the U. S. Supreme Court. (Vol. 1, Treas. Dec., 1899, No. 20,700.)

The act of June 13, 1898, known as the "war-revenue act," took effect on the day next succeeding the day of its passage—that is, on June 14, 1898, except as otherwise provided for. (Sec. 51.)

ACTS OF CONGRESS RELATING TO INTERNAL REVENUE.

ENACTED SINCE JULY 4, 1861.¹

Not including private acts, nor appropriation acts passed prior to the enactment of the Revised Statutes, June 22, 1874.

REVISED STATUTES, TITLE XXXV, SECTIONS 3140-3465.

No reference can be had to the original statutes to control the construction of any section of the Revised Statutes when its meaning is plain, but where there is a substantial doubt as to the meaning of the language used in the revision the old law is a valuable source of information. (United States v. Bowen, 100 U. S., 508, 513.)

"In construing any part of the Revised Statutes it is admissible and often necessary to recur to its connection in the act of which it was originally a part." (United States v. Hirsch, 100 U. S., 35.)

"In case of ambiguous language in the Revised Statutes or uncertainty as to the true construction to be given to the words of any section, previous acts on the same subject may be referred to and examined for light on the object and intent of Congress as shown by the course of legislation, in the same manner as statutes *in pari materia* relating to the same subject may always be taken, compared, and construed together." (Wright v. United States, 15 Ct. Clms., 87. See, also, United States v. Claflin, 97 U. S. 546, and opinion of First Comptroller Porter in Kansas claim for 5 per cent net proceeds of public lands, 1 Lawrence Dec., 43.)

An act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes, approved August 5, 1861 (12 Stat., 292).

Direct tax and income.

An act to provide internal revenue to support the Government and to pay interest on the public debt, approved July 1, 1862 (12 Stat., 432).

Office of internal revenue created.

Income tax.—Under this act the tax was 3 per cent on incomes over \$600 and not over \$10,000; over \$10,000, 5 per cent. Act of March 3, 1865, over \$600 and not over \$5,000, 5 per cent; over \$5,000, 10 per cent on excess over \$5,000. Act of March 2, 1867, over \$1,000, 5 per cent. Act July 14, 1870, over \$2,000, 2½ per cent. Income tax expired by limitation December 31, 1871. No income tax was collected under the act of June 30, 1864, as it was amended by the act of March 3, 1865, before it was collectible.

Imposed tax on cotton.

An act increasing temporarily the duties on imports, and for other purposes, approved July 14, 1862 (12 Stat., 543, 560).

Sections 24 and 25 relate to internal revenue.

An act to impose an additional duty on *sugars* produced in the United States, approved July 16, 1862 (12 Stat., 588).

¹ On this date Congress convened in its first (extraordinary) session after the commencement of the war of the rebellion, at which session was commenced the legislation which has since produced the present system of internal taxation.

Joint resolution to amend section 77 of "An act to provide internal revenue to support the Government and to pay interest on the public debt," and for other purposes. Approved July 17, 1862 (12 Stat., 627).

An act to amend an act entitled "An act to provide internal revenue to support the Government and to pay interest on the public debt" approved July 1, 1862. Approved December 25, 1862 (12 Stat., 632).

An act to provide ways and means for the support of the Government, approved March 3, 1863 (12 Stat., 709).

Section 7, bank circulation.

An act to amend an act entitled "An act to provide internal revenue to support the Government and [to] pay interest on the public debt," approved July 1, 1862, and for other purposes. Approved March 3, 1863 (12 Stat., 713).

An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes, approved March 3, 1863 (12 Stat., 737).

Joint resolution to provide for the printing annually of the report of the Commissioner of Internal Revenue, approved January 13, 1864 (13 Stat., 400).

An act to increase the internal revenue, and for other purposes, approved March 7, 1864 (13 Stat., 14).

An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes, approved June 30, 1864 (13 Stat., 223).

Inspection stamps required on cigars. No money value.

Joint resolution imposing a *special income duty* [for the year ending December 31 next preceding October 1, 1864], approved July 4, 1864 (13 Stat., 417).

An act to amend an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864. Approved December 22, 1864 (13 Stat., 420).

An act to amend an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864. Approved March 3, 1865 (13 Stat., 469).

Inspection stamps required on tobacco and snuff. No money value.

An act amendatory of certain acts imposing duties upon foreign importations, approved March 3, 1865 (13 Stat., 491).

An act authorizing the Secretary of the Treasury to appoint assistant assessors of internal revenue, approved January 15, 1866 (14 Stat., 2).

An act to declare the meaning of certain parts of the internal-revenue act, approved June 30, 1864, and for other purposes. Approved March 10, 1866 (14 Stat., 4).

An act to *reduce internal taxation* and to amend an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864, and acts amendatory thereof. Approved July 13, 1866 (14 Stat., 98).

First act reducing taxation. Stamps first required on fermented liquors. Changing "Licenses" to "Special taxes."

An act to authorize the refunding of certain taxes, approved July 27, 1866 (14 Stat., 301).

An act amendatory of section thirteen of an act entitled "An act to

amend an act entitled 'An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes,' approved June 30, 1864," approved March 3, 1865. Approved July 27, 1866 (14 Stat., 301).

Joint resolution to prevent the further enforcement of the joint resolution (No. 77) approved July 4, 1864, against officers and soldiers of the United States who have been honorably discharged, so as to relieve them from the further payment of the special 5 per cent *income tax* imposed thereby, approved July 28, 1866 (14 Stat., 371).

Joint resolution to amend existing laws relating to internal revenue, approved February 5, 1867 (14 Stat., 565).

A resolution to provide in certain cases for the *removal of alcohol from bonded warehouses* free from internal tax, approved February 18, 1867 (14 Stat., 565).

An act to amend existing laws relating to internal revenue, and for other purposes, approved March 2, 1867 (14 Stat., 471).

Reduced taxes.

An act to exempt wrapping paper made from wood or cornstalks from internal tax, and for other purposes, approved March 26, 1867 (15 Stat., 6).

An act to prevent frauds in the collection of the tax on *distilled spirits*, approved January 11, 1868 (15 Stat., 34).

Prohibits removal of spirits from warehouse for the purpose of transportation, redistillation, or rectification, change of package, or for any other purpose, until the full tax has been paid.

An act to provide for the exemption of *cotton* from internal tax, approved February 3, 1868 (15 Stat., 34).

Reduced taxes by repealing cotton tax.

Joint resolution to provide for a commission to examine and report on *meters* for distilled spirits, approved February 3, 1868 (15 Stat., 246).

An act to exempt certain *manufactures* from internal tax, and for other purposes, approved March 31, 1868 (15 Stat., 58).

Reduced taxes.

An act for the relief of certain *exporters of rum*, approved June 25, 1868 (15 Stat., 78).

Joint resolution to correct an act entitled "An act for the relief of certain *exporters of rum*." Approved July 6, 1868 (15 Stat., 256).

An act imposing taxes on DISTILLED SPIRITS and TOBACCO, and for other purposes, approved July 20, 1868 (15 Stat., 125).

Stamps first required on distilled spirits. Revised the entire law relative to spirits and tobacco. Reduced taxation. Tax on cigars and tobacco payable by stamps. Inspectors abolished except inspectors of tobacco. Supervisors and detectives authorized.

An act to correct an error in the enrollment of the "Act imposing taxes on distilled spirits and tobacco, and for other purposes." Approved July 27, 1868 (15 Stat., 238).

An act to amend an act entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July twentieth, eighteen hundred and sixty-eight. Approved December 22, 1868 (15 Stat., 266).

An act to allow DEPUTY COLLECTORS of internal revenue, acting as collectors, the pay of collectors, and for other purposes, approved March 1, 1869 (15 Stat., 282).

An act to amend an act entitled "An act to exempt certain manufactures from internal tax, and for other purposes," approved March thirty-first, eighteen hundred and sixty-eight. Approved March 3, 1869 (15 Stat., 336).

"Joint resolution to supply Omissions in the Enrollment of certain Appropriation Acts approved March third, eighteen hundred and sixty-nine," approved March 29, 1869 (16 Stat., 52).

An act to amend an act entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July twentieth, eighteen hundred and sixty-eight. Approved April 10, 1869 (16 Stat., 41.)

Joint resolution in relation to *female clerks* in the Internal Revenue Bureau, approved June 29, 1870 (16 Stat., 382).

An act to define the Intent of an Act entitled "An act to allow DEPUTY COLLECTORS of internal revenue, acting as collectors, the pay of collector[s], and for other purposes," approved March one, eighteen hundred and sixty-nine. Approved July 1, 1870 (16 Stat., 179).

A resolution to determine the construction of an act to provide internal revenue to support the Government, [to pay interest on the public debt,] and for other purposes, approved June thirtieth, eighteen hundred and sixty-four. Approved July 13, 1870 (16 Stat., 387).

An act to reduce internal taxes, and for other purposes, approved July 14, 1870 (16 Stat., 256).

Repealed taxes on gross receipts, legacies and successions, passports, and special taxes, except those relating to spirits, fermented liquors, and tobacco, also taxes on sales. Income tax to expire December 31, 1871.

An act to amend existing laws relating to internal revenue, approved July 14, 1870 (16 Stat., 274).

An act to amend section four of the Act of March thirty-one, eighteen hundred and sixty-eight, approved July 14, 1870 (16 Stat., 277).

Joint resolution to construe the Act of March thirty-one, eighteen hundred and sixty-eight, approved July 14, 1870 (16 Stat., 388).

An act relating to internal taxes, approved March 3, 1871 (16 Stat., 475).

Joint resolution to amend section four, act of July twenty, eighteen hundred and sixty-eight, approved March 3, 1871 (16 Stat., 601).

An act to repeal the paragraphs of *Schedule C* of the internal revenue acts imposing taxes on *canned meats, fish and certain other articles*, approved March 5, 1872 (17 Stat., 36).

An act to provide for the abatement or repayment of taxes on *distilled spirits in bond destroyed by casualty*, approved May 27, 1872 (17 Stat., 162).

An act to reduce duties on imports and to reduce internal taxes, and for other purposes, approved June 6, 1872 (17 Stat., 238).

Stamp duties on instruments, except bank checks, repealed. Moieties abolished. Uniform rate of 20 cents per pound on tobacco instead of the two rates, 16 and 32 cents. Tax on spirits, 70 cents per gallon.

An act for the reduction of Officers and Expenses of the internal revenue, approved December 24, 1872 (17 Stat., 401).

Assessors abolished. Reduces collection districts.

An act to remit the Excise Taxes upon *Alcohol* used by Universities and Colleges for *scientific purposes*, approved February 21, 1873 (17 Stat., 468).

An act to amend an act entitled "An act to reduce duties on imports and to reduce internal taxes, and for other purposes," approved June sixth, eighteen hundred and seventy-two, and for other purposes.

Approved March 3, 1873. Section 5 of this act amends section 55 of the act of July 20, 1868, as amended by the act of June 6, 1872 (17 Stat., 559).

An act to amend an act entitled "An act to prevent smuggling, and for other purposes," approved July eighteenth, eighteen hundred and sixty-six. Approved March 3, 1873 (17 Stat., 580).

Reprint of internal-revenue laws from August 5, 1861, to March 3, 1873. Submitted in response to order of the Senate of May 16, 1898, for use in consideration of House bill 10100, to provide ways and means to meet war expenditures.

An act relating to the fractional Parts of a Barrel containing *fermented liquors*, approved March 3, 1873 (17 Stat., 586).

An act to place at the Disposal of the Commissioner of Internal Revenue certain Copies of the new Compilation of Internal-revenue laws. Approved March 3, 1873 (17 Stat., 621).

55th Congress, 2d session. Senate Report No. 1123.

ACTS, ETC., SINCE DECEMBER 1, 1873, THE DATE TO WHICH THE REVISED STATUTES OF THE UNITED STATES RELATE. (See Sec. 5595, R. S.)

(Supplement,¹ Vol. 1, Revised Statutes, contains legislation of 1874-1891, Forty-third to Fifty-first Congress, inclusive.)

Forty-third Congress.

An act to so amend the laws relative to internal revenue as to allow *distillery warehouses* to be continued in use after changes have occurred in the management of the business, approved January 8, 1874 (18 Stat., 2). [Sec. 3271a.]

An act to abolish the office of *Deputy Commissioner* of Internal Revenue, approved January 29, 1874 (18 Stat., 6).

Note to section 322, R. S.

An act to facilitate the *exportation of distilled spirits*, and amendatory of the acts in relation thereto, approved June 9, 1874 (18 Stat., 64). [Sec. 3330.]

An act explanatory of the act of June thirtieth, eighteen hundred and sixty-four; became law June 18, 1874 (18 Stat., 80).

An act for the relief of *savings institutions* having no capital stock and doing business solely for the benefit of depositors, approved June 22, 1874 (18 Stat., 194).

An act to provide for the stamping of *unstamped instruments*, documents, or papers, approved June 23, 1874 (18 Stat., 250).

An act to amend existing customs and internal-revenue laws, and for other purposes, approved February 8, 1875 (18 Stat., 309).

An act to correct errors and to supply omissions in the Revised Statutes of the United States, approved February 18, 1875 (18 Stat., 316).

The changes made by this act were incorporated into the second edition Revised Statutes in their proper place.

An act to further protect the sinking fund and provide for the exigencies of the Government, approved March 3, 1875 (18 Stat., 339).

Increased tax on spirits to 90 cents per gallon and tobacco to 24 cents per pound, cigars to \$6 per thousand.

¹ This supplement is a reproduction of laws enacted since the passage of the Revised Statutes, which are neither obsolete, local, temporary and expired, special, superseded, nor repealed.

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes, approved March 3, 1875 (18 Stat., 352).

Section 12 of "An act making appropriations to supply deficiencies in the appropriations for fiscal years ending June thirtieth, eighteen hundred and seventy-five, and prior years, and for other purposes," approved March 3, 1875 (18 Stat., 419).

An act to amend section numbered three thousand three hundred and forty-two of the Revised Statutes of the United States, in relation to *affixing stamps on brewers' casks*, approved March 3, 1875 (18 Stat., 484).

An act to authorize the Secretary of the Treasury to adjust and remit certain taxes and penalties claimed to be due from mining and other corporations, and for other purposes, approved March 3, 1875 (18 Stat., 507).

Forty-fourth Congress.

An act to extend the time for *stamping unstamped instruments*, approved February 25, 1876 (19 Stat., 5).

Time extended to January 1, 1877.

Joint resolution concerning *special-tax stamps*, approved May 8, 1876 (19 Stat., 213). [Sec. 3233a.]

An act to define the tax on *fermented or malt liquors*, approved May 13, 1876 (19 Stat., 53). [Sec. 3337a.]

An act relative to the redemption of *unused stamps*, approved July 12, 1876 (19 Stat., 88). [Sec. 3426a.]

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes, approved August 15, 1876 (19 Stat., 152).

Supervisors abolished. Reduced number of collection districts.

An act to perfect the revision of the statutes of the United States, and of the statutes relating to the District of Columbia, approved February 27, 1877 (19 Stat., 240).

Changes made by this act incorporated into the second edition Revised Statutes.

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-eight, and for other purposes, approved March 3, 1877 (19 Stat., 303).

Reduced number of collection districts.

An act relating to the production of *fruit brandy* and to punish frauds connected with the same, approved March 3, 1877 (19 Stat., 393).

Forty-fifth Congress.

Joint resolution declaring that a reduction of the tax on *distilled spirits* is inexpedient, approved February 18, 1878 (20 Stat., 248).

Joint resolution to prescribe the time for the payment of the tax on *distilled spirits*, and for other purposes, approved March 28, 1878 (20 Stat., 249).

Repealed by the act of May 28, 1880.

An act to extend the provisions of section thirty-two hundred and ninety-seven of the Revised Statutes to other institutions of learning, approved May 3, 1878 (20 Stat., 48). [Sec. 3297a.]

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes, approved June 19, 1878 (20 Stat., 187). [Secs. 3157a, 3463a.]

An act to amend section five thousand four hundred and ninety-seven of the Revised Statutes relating to *embezzlement* by officers of the United States, approved February 3, 1879 (20 Stat., 280). [Sec. 5497, Appendix.]

An act to amend the laws relating to internal revenue, approved March 1, 1879 (20 Stat., 327).

Reduced tax on tobacco and many important changes made.

Forty-sixth Congress.

An act relating to *vinegar factories* established and operated prior to March first, 1879, approved June 14, 1879 (21 Stat., 20). [Sec. 3282.]

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes, approved June 21, 1879 (21 Stat., 23).

Salary of storekeepers limited.

An act providing for the binding of the Internal-Revenue Laws and Manual, approved June 27, 1879 (21 Stat., 35).

An act authorizing an allowance for *loss by leakage* or casualty of spirits withdrawn from distillery warehouses for exportation, approved December 20, 1879 (21 Stat., 59).

An act to amend the laws in relation to internal revenue, approved May 28, 1880 (21 Stat., 145).

"Carlisle bill." Repealed provision charging 10 cents for stamps other than tax-paid or export.

An act to amend sections thirty-three hundred and eighty-five and thirty-three hundred and fifty-seven of the Revised Statutes of the United States, approved June 9, 1880 (21 Stat., 167).

An act to amend the sixth subdivision of section thirty-two hundred and forty-four of the Revised Statutes of the United States, approved June 16, 1880 (21 Stat., 291).

Forty-seventh Congress.

An act to repeal so much of section thirty-three hundred and eighty-five of the Revised Statutes as imposes an export tax on *tobacco*, approved August 8, 1882 (22 Stat., 372).

An act to amend section thirty-three hundred and sixty-two of the Revised Statutes relating to the tax on *perique tobacco*, approved January 9, 1883 (22 Stat., 401).

An act relating to *exportation of tobacco*, snuff, and cigars, in bond, free of tax to adjacent foreign territory, approved January 13, 1883 (22 Stat., 402).

An act to reduce internal-revenue taxation, and for other purposes, approved March 3, 1883 (22 Stat., 488).

Reduced tax on tobacco to 8 cents per pound and repealed stamp taxes on bank checks, matches, perfumery, medicinal preparations, and other articles imposed by Schedule A following section 3437, R. S.

Forty-eighth Congress.

An act to limit the time within which prosecutions may be instituted against persons charged with violating internal-revenue laws, approved July 5, 1884 (23 Stat., 122).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1885, and for other purposes, approved July 7, 1884 (23 Stat., 172).

Similar act for fiscal year ending June 30, 1886, approved March 3, 1885 (23 Stat., 404).

Forty-ninth Congress.

An act to amend section thirty-three hundred and thirty-six of the Revised Statutes of the United States, approved April 29, 1886 (24 Stat., 15).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1887, and for other purposes, approved July 31, 1886 (24 Stat., 187).

An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of *oleomargarine*, approved August 2, 1886 (24 Stat., 209).

An act to provide for the *inspection* of *tobacco*, *cigars*, and *snuff*, and to repeal section three thousand one hundred and fifty-one of the Revised Statutes, approved August 4, 1886 (24 Stat., 218).

Fiftieth Congress.

An act to prevent the manufacture or sale of *adulterated food or drugs* in the District of Columbia, approved October 12, 1888 (25 Stat., 549).

Practically repealed by the "Act relating to the adulteration of foods and drugs in the District of Columbia," approved February 17, 1898 (30 Stat., 246).

An act to provide for warehousing *fruit brandy*, approved October 18, 1888 (25 Stat., 560).

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1890, and for other purposes, approved March 2, 1889 (25 Stat., 939).

Fifty-first Congress.

An act to provide for certain of the most urgent deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1890, and for other purposes, approved April 4, 1890 (26 Stat., 34).

An act to amend section 3354, Revised Statutes, approved June 18, 1890 (26 Stat., 161).

Removal of beer for bottling by a pipe line or conduit.

An act to provide for the exportation of fermented liquor in bond without payment of internal-revenue tax, approved June 18, 1890 (26 Stat., 162).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1891, approved July 11, 1890 (26 Stat., 228).

An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1890, and for prior years, and for other purposes, approved September 30, 1890 (26 Stat., 504).

An act to reduce the revenue and equalize the duty on imports, and for other purposes, approved October 1, 1890 (26 Stat., 567).

"McKinley bill." Imposed tax on opium, authorized bounty on sugar, reduced tax on tobacco to 6 cents per pound, special-tax year to commence July 1.

An act to authorize the payment of drawback or rebate in certain cases, approved December 18, 1890 (26 Stat., 689).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1892, approved March 3, 1891 (26 Stat., 862).

An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1892, approved March 3, 1891 (26 Stat., 1050).

Removal of distilled spirits free of tax for making sugar from sorghum.

ACTS, ETC., SINCE SUPPLEMENT REVISED STATUTES, VOLUME 1.

Fifty-second Congress.

An act to prohibit the coming of Chinese persons into the United States, approved May 5, 1892 (27 Stat., 25).

The "Geary bill." Certificates of residence to be obtained from collector of internal revenue. This act was amended by the act, approved November 3, 1893, known as the "McCreary bill" (28 Stat., 7).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1893, and for other purposes, approved July 16, 1892 (27 Stat., 183).

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1894, and for other purposes, approved March 3, 1893 (27 Stat., 572).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1894, and for other purposes, approved March 3, 1893 (27 Stat., 675).

Fifty-third Congress.

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1895, and for other purposes, approved July 31, 1894 (28 Stat., 162).

Contains "THE DOCKERY BILL."

An act to provide for the collection of internal revenue, and for other purposes, approved August 27, 1894 (28 Stat., 508).

An act to reduce taxation, to provide revenue for the support of the Government, and for other purposes, became a law without the President's approval, in effect August 28, 1894 (28 Stat., 509).

"THE WILSON BILL" imposed an income tax, since declared unconstitutional. Tax, 2 per cent upon incomes over \$4,000. Reimposed tax on playing cards. Repealed bounty on sugar.

(Became a law August 27 according to Sup. R. S., vol. 2, p. 334. See *United States v. Burr*, 159 U. S., 78.)

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1896, and for other purposes, approved March 2, 1895 (28 Stat., 910).

Bounty on sugar—payment on production prior to August 28, 1894.

Fifty-fourth Congress.

An act to repeal section sixty-one of an act to reduce taxation, to provide revenue for the Government, and for other purposes, which became a law August twenty-eighth, eighteen hundred and ninety-four, approved June 3, 1896 (29 Stat., 195).

Alcohol in the arts.

An act to amend section thirty-two hundred and fifty-five of the Revised Statutes of the United States, concerning the distilling of brandy from fruits, approved June 3, 1896 (29 Stat., 195).

An act defining cheese, and also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of "filled cheese," approved June 6, 1896 (29 Stat., 253).

An act to allow the bottling of distilled spirits in bond, approved March 3, 1897 (29 Stat., 626).

An act to amend section 40 of "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October first, eighteen hundred and ninety, so as to authorize the sale of forfeited domestic smoking opium to the highest bidder, approved March 3, 1897 (29 Stat., 695).

Fifty-fifth Congress.

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes, approved June 4, 1897 (30 Stat., 11).

Bounty on sugar—payment of balance of claims, etc.

An act to provide revenue for the Government and to encourage the industries of the United States, approved July 24, 1897 (30 Stat., 151).

The "DINGLEY BILL." Amended sections 3341 and 3394, R. S.

An act to provide ways and means to meet war expenditures, and for other purposes, approved June 13, 1898 (30 Stat., 448).

War-revenue act. Additional special taxes imposed; increased tax on fermented liquors, tobacco, and cigars; imposed legacy taxes, tax on mixed flour, stamp taxes on instruments, etc.

An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1898, and for prior years, and for other purposes, approved July 7, 1898 (30 Stat., 652).

Relative to payment of gaugers of fruit brandy—additional temporary force in internal-revenue service.

An act to amend section thirty-two hundred and eighty-seven of the Revised Statutes of the United States, concerning the drawing off, gauging, marking, and removal of spirits, approved February 21, 1899 (30 Stat., 843).

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1900, and for other years, approved February 24, 1899 (30 Stat., 864).

Term of temporary service of additional clerks extended one year.

(PUBLIC RESOLUTION—No. 22.) Joint resolution to amend section twenty-five of the act passed June thirteenth, eighteen hundred and ninety-eight, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved February 28, 1899 (30 Stat., 1390).

Bonds secured by mortgages, but one stamp required, etc.

An act to amend the internal-revenue laws relating to distilled spirits, and for other purposes, approved March 3, 1899 (30 Stat., 1349).

Allowance on loss in warehouse.

An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1900, and for other years, approved March 3, 1899 (30 Stat., 1091).

PROVISIONS RELATIVE TO ACTS OF REPEAL.

SEC. 12, R. S. Whenever an act is repealed, which repealed a former act, such former act shall not thereby be revived, unless it shall be expressly so provided.

SEC. 13, R. S. The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

SEC. 55, act October 1, 1890. Repealing and saving clause. That all laws and parts of laws inconsistent with this act are hereby repealed: *Provided, however*, That the repeal of existing laws, or modifications thereof, embraced in this act shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications, but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modification had not been made.

Any offenses committed, and all penalties or forfeitures or liabilities incurred under any statute embraced in, or changed, modified, or repealed by this act may be prosecuted and punished in the same manner and with the same effect as if this act had not been passed. All acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in or modified, changed, or repealed by this act, shall not be affected thereby, and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this act may be commenced and prosecuted within the same time and with the same effect as if this act had not been passed.

SEC. 72, act August 28, 1894. Repealing and saving clause. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but the repeal of existing laws or modifications thereof embraced in this act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this act under any statute embraced in or changed, modified, or repealed by this act may be prosecuted or punished in the same manner and with the same effect as if this act had not been passed. All acts of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this act shall not be affected thereby; and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising

or acts done or committed prior to the passage of this act, may be commenced and prosecuted within the same time and with the same effect as if this act had not been passed: *And provided further*, That nothing in this act shall be construed to repeal the provisions of section three thousand and fifty-eight of the Revised Statutes as amended by the act approved February twenty-third, eighteen hundred and eighty-seven, in respect to the abandonment of merchandise to underwriters or the salvors of property, and the ascertainment of duties thereon.

Repeals by implication are not favored, particularly in revenue laws, and will only be held to exist when the repugnance is positive, and then only to the extent of the repugnance. (*United States v. 100 Barrels Spirits*, 12 Int. Rev. Rec., 153.)

Nothing is better settled than that repeals, and the same may be said of annulments, by implication, are not favored by the courts, and that no statute will be construed as repealing a prior one, unless so clearly repugnant thereto as to admit of no other reasonable construction. (*Cope v. Cope*, 137 U. S., 682, and cases cited.)

A later statute covering the whole subject-matter of a former one where the objects of the two statutes are the same operates as a repeal. (*United States v. Claflin*, 97 U. S., 546. See also *United States v. Tynen*, 11 Wall., 88.)

When a later statute is a complete revision of the subject to which the earlier statute related and the new legislation was manifestly intended as a substitute for the former legislation, the prior act must be held to have been repealed. (*United States v. Ranlett and Stone* (1898), 172 U. S., 133.)

SCHEDULE OF ARTICLES AND OCCUPATIONS SUBJECT TO TAX.

SPECIAL TAXES.

	Rate of tax.
Rectifiers of less than 500 barrels a year.....	\$100.00
Rectifiers of 500 barrels or more a year.....	200.00
Retail liquor dealers.....	25.00
Wholesale liquor dealers.....	100.00
Retail dealers in malt liquors.....	20.00
Wholesale dealers in malt liquors.....	50.00
Manufacturers of stills.....	50.00
and for stills or worms, manufactured, each.....	20.00
Brewers, annual manufacture less than 500 barrels.....	50.00
annual manufacture, 500 barrels or more.....	100.00
Manufacturers of oleomargarine.....	600.00
Wholesale dealers in oleomargarine.....	480.00
Retail dealers in oleomargarine.....	48.00
Manufacturers of filled cheese.....	400.00
Wholesale dealers in filled cheese.....	250.00
Retail dealers in filled cheese.....	12.00
Bankers with capital, preceding fiscal year, not over \$25,000.....	50.00
For every additional thousand in excess of \$25,000.....	2.00
(In estimating capital, surplus shall be included.)	
Brokers who have not paid as hankers.....	50.00
Pawnbrokers.....	20.00
Commercial brokers.....	20.00
Custom-house brokers.....	10.00
Proprietors of theaters, museums, and concert halls, in cities of over 25,000 population per last census.....	100.00
Proprietors of circuses.....	100.00
Proprietors or agents of all other exhibitions or shows for money.....	10.00
Proprietors of bowling alleys and billiard rooms, for each alley or table.....	5.00
Dealers in leaf tobacco, sales not over 50,000 pounds.....	6.00
Over 50,000 and not over 100,000 pounds.....	12.00
Over 100,000 pounds.....	24.00
Dealers in tobacco, sales over 50,000 pounds.....	12.00
Manufacturers of tobacco, sales not over 50,000 pounds.....	6.00
Over 50,000 and not over 100,000 pounds.....	12.00
Over 100,000 pounds.....	24.00
Manufacturers of cigars, sales not over 100,000 cigars.....	6.00
Over 100,000 and not over 200,000 cigars.....	12.00
Over 200,000 cigars.....	24.00
Manufacturers, packers, or repackers of mixed flour.....	12.00

DISTILLED SPIRITS, ETC.

Distilled spirits, per gallon.....	1.10
Stamps for distilled spirits intended for export, each.....	.10
Except when affixed to wooden packages containing two or more 5-gallon metallic cans for export.....	.05
Case stamps for spirits bottled in bond.....	.10
Wines, liquors, or compounds known or denominated as wine, and made in imitation of sparkling wine or champagne, but not made from grapes grown in the United States, and liquors not made from grapes, currants, rhubarb, or berries grown in the United States, but produced by being rectified or mixed with distilled spirits or by the infusion of any matter in spirits, to be sold as wine, or as a substitute for wine, in bottles containing not more than 1 pint, per bottle or package.....	.10
Same, in bottles containing more than 1 pint and not more than 1 quart, per bottle or package.....	.20
(And at the same rate for any larger quantity of such merchandise, however put up or whatever may be the package.)	
Stamp tax on wine bottled for sale. See Schedule B.	

FERMENTED LIQUORS.

Fermented liquors, per barrel, containing not more than 31 gallons.....	2.00
(And at a proportionate rate for halves, thirds, quarters, sixths, and eighths of barrels.)	
More than one barrel of 31 gallons and not more than 63 gallons, in one package.....	4.00

TOBACCO AND SNUFF.

	Rate of tax.
Tobacco, however prepared, manufactured, and sold, or removed for consumption or sale, per pound.....	\$0. 12
Snuff, however prepared, manufactured, and sold, or removed for consumption or sale, per pound .....	. 12

CIGARS AND CIGARETTES.

Cigars, of all descriptions, made of tobacco or any substitute, weighing over 3 pounds per thousand, per thousand	3. 60
Cigars, of all descriptions, made of tobacco or any substitute, weighing not over 3 pounds per thousand, per thousand	1. 00
Cigarettes, made of tobacco or any substitute, weighing over 3 pounds per thousand, per thousand	3. 60
Cigarettes, made of tobacco or any substitute, weighing not over 3 pounds per thousand, per thousand	1. 50

OLEOMARGARINE.

All substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat made in imitation or semblance of butter, or when so made, calculated or intended to be sold as butter or for butter, domestic, per pound .....	. 02
Same, imported from foreign countries, per pound .....	. 15

FILLED CHEESE.

Tax on, per pound .....	. 01
Tax on imported, per pound 08

OPIUM.

Prepared smoking opium, per pound	10. 00
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MIXED FLOUR.

Per barrel of 196 pounds, or more than 98 pounds 04
Half barrel of 98 pounds, or more than 49 pounds 02
Quarter barrel of 49 pounds, or more than 24½ pounds .....	. 01
Eighth barrel, of 24½ pounds or less .....	. 00½
Mixed flour imported from foreign countries, in addition to import duties, must pay internal-revenue tax as above.	

STAMP DUTIES ON AND AFTER JULY 1, 1898.

Schedule A.—Documentary.

1. Bonds, debentures, or certificates of indebtedness of any association, company, or corporation, on each \$100 of face value or fraction thereof...	. 05
2. On each original issue of certificates of stock, whether on organization or reorganization, on each \$100 of face value or fraction thereof .....	. 05
On all sales, agreements to sell, memoranda of sales, deliveries or transfers of shares, or certificates of stock of any association or corporation, on each \$100 of face value or fraction thereof .....	. 02
3. Upon each sale, agreement to sell, or agreement of sale of any products or merchandise at any exchange or board of trade, or other similar place, either for present or future delivery, for each \$100 in value of said sale .....	. 01
And for each \$100 or fractional part thereof in excess of \$100 .....	. 01
4. Bank check, draft, certificate of deposit not drawing interest, or order for the payment of any sum of money drawn upon or issued by any bank, trust company, or any person or persons, companies, or corporations, at sight or on demand .....	. 02

Rate of tax.

5. Bill of exchange (inland), draft, certificate of deposit drawing interest, or order for payment of any sum of money otherwise than at sight or on demand, or any promissory note, except bank notes issued for circulation, and for each renewal of same, for a sum not exceeding \$100...	\$0. 02
And for each additional \$100, or fractional part thereof in excess of \$100.	. 02
(This clause applies to money orders issued by the Government.)	
6. Bill of exchange (foreign), or letter of credit (including orders by telegraph, or otherwise, issued by express or other companies, or any person or persons), drawn in, but payable out of, the United States, drawn singly or otherwise than in sets of three or more, for not exceeding \$100 .....	. 04
And for each additional \$100, or fractional part thereof in excess of \$100.	. 04
If drawn in sets of two or more, for every bill of each set for a sum not exceeding \$100, or its equivalent in foreign currency, value fixed by the United States standard .....	. 02
For each additional \$100, or fractional part thereof in excess of \$100....	. 02
7. Bills of lading or receipts (other than charter party), for goods, etc., to be exported .....	. 10
8. Bills of lading, manifests, etc., issued by express companies or public carriers, etc., and each duplicate thereof .....	. 01
9. Bond, indemnifying, etc., except those required in legal proceedings...	. 50
10. Certificates of profits, or certificates or memoranda showing interest in the property or accumulations of any association, company, or corporation, and all transfers thereof, on each \$100 of face value or fraction thereof .....	. 02
11. Certificate of damage, or otherwise, and all other certificates or documents issued by port warden or marine surveyor .....	. 25
12. Certificates of any description required by law, not otherwise specified.	. 10
13. Charter party, contract, or agreement for the charter of any ship, vessel, or steamer, or any renewal or transfer thereof, for every ship, registered tonnage not exceeding 300 tons.....	3. 00
More than 300 and not exceeding 600 tons.....	5. 00
More than 600 tons	10. 00
14. Contract: Broker's note, or memorandum of sale of goods, or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind, issued by brokers, etc., for each note or memorandum of sale not otherwise provided for in act .....	. 10
15. Conveyance: Deed, instrument, or writing conveying lands, tenements, or other realty, etc., value over \$100 and not exceeding \$500 .....	. 50
For each additional \$500 or fraction thereof.....	. 50
16. Dispatch, telegraphic, on each message .....	. 01
17. Entry of goods, wares, or merchandise in custom-house, not exceeding \$100 in value.....	. 25
Exceeding \$100 and not exceeding \$500.....	. 50
Exceeding \$500 in value	1. 00
Entry for withdrawal of goods or merchandise from customs bonded warehouse .....	. 50
18. Insurance, life, on every policy, except any fraternal beneficiary society or order, for each \$100 or fractional part thereof on the amount insured...	. 08
Industrial or weekly-payment plan, the tax is 40 per centum of the amount of the first weekly premium, as to which sworn statement is required to be made to the collector of the total amount of first weekly premiums received on policies issued during preceding month.	
19. Insurance, marine, inland, and fire (except purely cooperative or mutual), on each policy, or renewal, on amount of premium charged on each \$1 or fractional part .....	. 00½
20. Insurance, casualty, fidelity, and guarantee, on each policy, on each \$1 or fractional part thereof of premium received .....	. 00½
21. Lease, agreement, memorandum, or contract for the hire, use, or rent of land or tenement, not exceeding one year.....	. 25
Exceeding one year and not exceeding three years .....	. 50
If exceeding three years	1. 00
22. Manifest for custom-house entry or clearance of cargo of any ship, vessel, or steamer for a foreign port, registered tonnage not exceeding 300 tons.	1. 00
Exceeding 300 tons and not exceeding 600 tons	3. 00
Exceeding 600 tons.....	5. 00
(Does not apply to vessels plying between ports of United States and ports in British North America.)	

Rate of tax.

23. Mortgage, or pledge of lands, estate, or property, real or personal, heritable, movable, or made for payment of definite sums of money, also any conveyance of lands, estate, or property whatsoever, in trust, etc., exceeding \$1,000 and not more than \$1,500.....	\$0.25
On each \$500 or fractional part in excess of \$1,500.....	.25
(Same as above on all assignments or transfers.)	
24. Passage tickets by any vessel from the United States to a foreign port, costing not exceeding \$30.....	1.00
More than \$30 and not exceeding \$60.....	3.00
More than \$60.....	5.00
25. Power of attorney or proxy for voting at an election of officers of any incorporated company or association, except religious, charitable, literary societies, or public cemeteries.....	.10
26. Power of attorney to sell or convey real estate or to rent or lease the same, to collect or receive rent, to sell or transfer stock, bonds, etc.....	.25
(Papers used in the collection of pension, back pay, or bounty claims, or claims for property lost in military or naval service are exempt.)	
27. Protest: Upon the protest of every note, bill of exchange, acceptance, check, or draft, or any marine protest.....	.25
28. Telephone messages: Every person, firm, or corporation operating any telephone line or lines is required to make, within the first fifteen days of each month, a sworn statement to the collector of the number of messages or conversations transmitted over their lines during preceding month for which a charge of 15 cents or more was imposed, and for each of such messages or conversations to pay a tax of.....	.01
29. Warehouse receipts for goods, merchandise, or property held on storage, except agricultural products deposited by actual grower.....	.25

Schedule B.—Proprietary.

MEDICINAL PROPRIETARY ARTICLES AND PREPARATIONS, ETC.

1. For and upon every packet, box, bottle, pot, or phial, etc., containing any pills, powders, tinctures, waters (except natural spring waters and carbonated natural spring waters), etc., made and sold by any person whatsoever, claiming any private formula, secret or occult art, etc., sold under letters patent or trade-marks, etc., or recommended as remedies or specifics for any disease, when such packet, box, bottle, or phial, etc., shall not exceed the sum of 5 cents, at the retail price.....	.00½
When retail price exceeds 5 cents and does not exceed 10 cents.....	.00¾
When retail price exceeds 10 cents and does not exceed 15 cents.....	.00¾
When retail price exceeds 15 cents and does not exceed 25 cents.....	.00¾
And for each additional 25 cents or fractional part thereof.....	.00¾
2. Perfumery and cosmetics and other similar articles:	
For and upon every packet, box, bottle, pot, or phial, etc., where such packet, box, bottle, pot, phial, and contents shall not exceed in retail price 5 cents.....	.00½
When retail price exceeds 5 cents and does not exceed 10 cents.....	.00¾
When retail price exceeds 10 cents and does not exceed 15 cents.....	.00¾
When retail price exceeds 15 cents and does not exceed 25 cents.....	.00¾
And for each additional 25 cents of retail price or value or fractional part thereof in excess of 25 cents.....	.00¾
3. Chewing gum or substitutes therefor:	
For and upon each box, carton, jar, or package containing chewing gum, when the retail value does not exceed \$1.....	.04
If exceeding \$1, for each additional dollar or fractional part thereof....	.04
4. Sparkling or other wines when bottled for sale:	
Upon each bottle containing 1 pint or less.....	.01
Upon each bottle containing more than 1 pint.....	.02

STAMP TAX NOT UNDER SCHEDULES A AND B.

On seats in parlor or palace cars and berths in sleeping cars (stamp to be affixed to the ticket by the company).....	.01
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TAX ON LEGACIES AND DISTRIBUTIVE SHARES OF PERSONAL PROPERTY.

Rate of tax.

When the whole amount of personal property exceeds \$10,000 in actual value, passing from any person on or after June 13, 1898, taxes accrue and should be paid before distribution to the legatees as follows:

Personal property valued over \$10,000 and not over \$25,000, the tax is:

1. Legatee being of lineal issue, or lineal ancestor, brother, or sister to the person who died, for each and every \$100 clear value.....	\$0. 75
2. Legatee being the descendant of a brother or sister of the person who died, for each and every \$100 clear value.....	1. 50
3. Where legatee is the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the person who died, for each and every \$100 clear value.....	3. 00
4. Where legatee is the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grand parents of the person who died, for each and every \$100 clear value.....	4. 00
5. Where legatee shall be in any other degree of collateral consanguinity than is hereinbefore stated, or a stranger in blood to the person who died, or shall be a body politic or corporate, for each and every \$100 clear value.....	5. 00

Legacies, etc., passing to husband or wife of the person who died are exempt from tax or duty.

Where the amount or value of the whole property left by the decedent exceeds \$25,000, the rates hereinbefore given are required to be multiplied as follows:

- Over \$25,000 and not over \$100,000 by 1 $\frac{1}{2}$.
- Over \$100,000 and not over \$500,000, by 2.
- Over \$500,000 and not over \$1,000,000 by 2 $\frac{1}{2}$.
- Over \$1,000,000, by 3.

EXCISE TAXES ON PERSONS, FIRMS, COMPANIES, AND CORPORATIONS ENGAGED IN REFINING PETROLEUM AND SUGAR, WHOSE GROSS ANNUAL RECEIPTS EXCEED \$250,000.

One-fourth of 1 per cent on gross amount of receipts in excess of said sum.

BANKS AND BANKERS.

Circulation issued by any bank, etc., or person, per month.....	$\frac{1}{2}$ of 1 p. ct.
Circulation exceeding 90 per cent of capital, in addition, per month....	$\frac{1}{8}$ of 1 p. ct.
Banks, etc., on amount of notes of any person, State bank, or State banking association, used for circulation and paid out.....	10 per cent.
Banks, etc., bankers, or associations, on amount of notes of any town, city, or municipal corporation paid out by them	10 per cent.
Every person, firm, association, other than national bank associations, and every corporation, State bank, or State banking association, on the amount of <i>their own notes</i> used for circulation and paid out by them	10 per cent.
Every such person, firm, association, corporation, State bank, or State banking association, and also every national banking association on the amount of notes of any person, firm, association, other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city or municipal corporation, used for circulation and paid out by them	10 per cent.

PLAYING CARDS.

Playing cards, per pack, containing not more than fifty-four cards....	\$0. 02
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TAXES NOT PAYABLE BY STAMPS.

- Tax on deficiencies in production of spirits.
 - on excess of materials used in production of spirits.
 - on circulation of banks and bankers.
 - on notes paid out by banks and others.
- On telephone messages.
- On policies of life insurance issued on industrial or weekly payment plan.
- Excise taxes on persons, firms, companies, and corporations engaged in refining petroleum and sugar.
- Legacies and distributive shares of personal property.
- Special tax on banks and bankers.
- Penalties of 50 per cent and 100 per cent.

Table of certain special taxes and 50 per cent penalties.

[Where the amounts are not divisible by 24.]

Commencing business—	No. of months liable.	Tax or penalty.	Annual rate, in dollars and cents.								
			\$5	\$10	\$15	\$20	\$25	\$50	\$100	\$200	\$250
June	1	Tax	\$0.42	\$0.83	\$1.25	\$1.67	\$2.08	\$4.17	\$8.33	\$16.67	\$20.83
		Penalty .....	.21	.42	.63	.83	1.04	2.08	4.17	8.33	10.42
May	2	Tax .....	.83	1.67	2.50	3.33	4.17	8.33	16.67	33.33	41.67
		Penalty .....	.42	.83	1.25	1.67	2.08	4.17	8.33	16.67	20.83
April	3	Tax	1.25	2.50	3.75	5.00	6.25	12.50	25.00	50.00	62.50
		Penalty .....	.63	1.25	1.88	2.50	3.13	6.25	12.50	25.00	31.25
March ...	4	Tax	1.67	3.33	5.00	6.67	8.33	16.67	33.33	66.67	83.33
		Penalty .....	.83	1.67	2.50	3.33	4.17	8.33	16.67	33.33	41.67
February	5	Tax	2.08	4.17	6.25	8.33	10.42	20.83	41.67	83.33	104.17
		Penalty	1.04	2.08	3.13	4.17	5.21	10.42	20.83	41.67	52.08
January ..	6	Tax	2.50	5.00	7.50	10.00	12.50	25.00	50.00	100.00	125.00
		Penalty	1.25	2.50	3.75	5.00	6.25	12.50	25.00	50.00	62.50
December	7	Tax	2.92	5.83	8.75	11.67	14.58	29.17	58.33	116.67	145.83
		Penalty	1.46	2.92	4.38	5.83	7.29	14.58	29.17	58.33	72.92
November	8	Tax	3.33	6.67	10.00	13.33	16.67	33.33	66.67	133.33	166.67
		Penalty	1.67	3.33	5.00	6.67	8.33	16.67	33.33	66.67	83.33
October ..	9	Tax	3.75	7.50	11.25	15.00	18.75	37.50	75.00	150.00	187.50
		Penalty	1.88	3.75	5.63	7.50	9.38	18.75	37.50	75.00	93.75
September	10	Tax	4.17	8.33	12.50	16.67	20.83	41.67	83.33	166.67	208.33
		Penalty	2.08	4.17	6.25	8.33	10.42	20.83	41.67	83.33	104.17
August ..	11	Tax	4.58	9.17	13.75	18.33	22.92	45.83	91.67	183.33	229.17
		Penalty	2.29	4.58	6.88	9.17	11.46	22.92	45.83	91.67	114.58
July	12	Tax	5.00	10.00	15.00	20.00	25.00	50.00	100.00	200.00	250.00
		Penalty	2.50	5.00	7.50	10.00	12.50	25.00	50.00	100.00	125.00

*INTERNAL-REVENUE COLLECTION DISTRICTS IN THE UNITED STATES,
WITH LOCATION OF COLLECTORS' OFFICES.*

- Alabama.*—Collector's office, Birmingham.
Alaska.—See collector, Portland, Oreg.
Arizona.—Consolidated with New Mexico. Collector's office, Santa Fe, N. Mex.
Arkansas.—Collector's office, Little Rock.
California.—First district, collector's office, San Francisco; fourth district, collector's office, Sacramento.
Colorado.—Collector's office, Denver.
Connecticut.—Collector's office, Hartford.
Dakota (North and South.)—Consolidated with Nebraska. Collector's office, Omaha, Nebr.
Delaware.—Consolidated with Maryland. Collector's office, Baltimore, Md.
District of Columbia.—Consolidated with Maryland. Collector's office, Baltimore, Md.
Florida.—Collector's office, Jacksonville.
Georgia.—Collector's office, Atlanta.
Idaho.—Consolidated with Montana. Collector's office, Helena, Mont.
Illinois.—First district, collector's office, Chicago; fifth district, collector's office, Peoria; eighth district, collector's office, Springfield; thirteenth district, collector's office, East St. Louis.
Indiana.—Sixth district, collector's office, Lawrenceburg; seventh district, collector's office, Terre Haute.
Indian Territory.—See collector, Leavenworth, Kans.
Iowa.—Third district, collector's office, Dubuque; fourth district, collector's office, Burlington.
Kansas.—Collector's office, Leavenworth.
Kentucky.—Second district, collector's office, Owensboro; fifth district, collector's office, Louisville; sixth district, collector's office, Covington; seventh district, collector's office, Lexington; eighth district, collector's office, Danville.
Louisiana.—Collector's office, New Orleans.
Maine.—Consolidated with New Hampshire. Collector's office, Portsmouth, N. H.
Maryland.—Collector's office, Baltimore.
Massachusetts.—Collector's office, Boston.
Michigan.—First district, collector's office, Detroit; fourth district, collector's office, Grand Rapids.
Minnesota.—Collector's office, St. Paul.
Mississippi.—Consolidated with Louisiana. Collector's office, New Orleans, La.
Missouri.—First district, collector's office, St. Louis; sixth district, collector's office, Kansas City.
Montana.—Collector's office, Helena.
Nebraska.—Collector's office, Omaha.
Nevada.—Consolidated with fourth district of California. Collector's office, Sacramento, Cal.
New Hampshire.—Collector's office, Portsmouth.
New Jersey.—First district, collector's office, Camden; fifth district, collector's office, Newark.
New Mexico.—Collector's office, Santa Fe.
New York.—First district, collector's office, Brooklyn; second district, collector's office, New York; third district, collector's office, New York; fourteenth district, collector's office, Albany; twenty-first district, collector's office, Syracuse; twenty-eighth district, collector's office, Rochester.
North Carolina.—Fourth district, collector's office, Raleigh; fifth district, collector's office, Asheville.
Ohio.—First district, collector's office, Cincinnati; tenth district, collector's office, Toledo; eleventh district, collector's office, Chillicothe; eighteenth district, collector's office, Cleveland.
Oklahoma Territory.—See collector, Leavenworth, Kans.
Oregon.—Collector's office, Portland.

Pennsylvania.—First district, collector's office, Philadelphia; ninth district, collector's office, Lancaster; twelfth district, collector's office, Scranton; twenty-third district, collector's office, Pittsburg.

Rhode Island.—Consolidated with Connecticut. Collector's office, Hartford, Conn.

South Carolina.—Collector's office, Columbia.

Tennessee.—Second district, collector's office, Knoxville; fifth district, collector's office, Nashville.

Texas.—Third district, collector's office, Austin; fourth district, collector's office, Dallas.

Utah.—Consolidated with Montana. Collector's office, Helena, Mont.

Vermont.—Consolidated with New Hampshire. Collector's office, Portsmouth, N. H.

Virginia.—Second district, collector's office, Petersburg; sixth district, collector's office, Alexandria.

Washington.—Consolidated with Oregon. Collector's office, Portland, Oreg.

West Virginia.—Collector's office, Parkersburg.

Wisconsin.—First district, collector's office, Milwaukee; second district, collector's office, Madison.

Wyoming.—Consolidated with Colorado. Collector's office, Denver, Colo.

SUPREME COURT DECISIONS IN INTERNAL-REVENUE CASES.

Actions to recover back taxes paid.

- Philadelphia v. Collector, 5 Wall., 720.
 Braun v. Sauerwein, 10 Wall., 218.
 The Collector v. Hubbard, 12 Wall., 1; 13 Int. Rev. Rec., 189.
 Erskine v. Van Arsdale, 15 Wall., 75. Interest.
 Stewart v. Barnes, 153 U. S., 456. Interest.
 Cheatham et al. v. United States (Norvall, collector), 92 U. S., 85; 22 Int. Rev. Rec., 311.
 United States v. Savings Bank, 104 U. S., 728; 28 Int. Rev. Rec., 87. The presentation of a claim for refund to collector is in legal effect a presentation to the Commissioner.
 James v. Hicks, 110 U. S., 272.
 Kings County Savings Institution v. Blair, 116 U. S., 200; 82 Int. Rev. Rec., 30.

Payment of a judgment against the collector. Sec. 3220. Certificate of probable cause.

- United States v. Frederick Frerichs, 34 Int. Rev. Rec., 89; 124 U. S., 315.

Assessments, legal effect of.

- Clinkenbeard v. United States, 21 Wall., 65; 21 Int. Rev. Rec., 37.
 United States v. Rindekopf, 105 U. S., 418; 28 Int. Rev. Rec., 141.

Suits against officers for damages, injunctions, etc.

- Haffin v. Mason, 15 Wall., 671; 17 Int. Rev. Rec., 118. Suit for trespass.
 Erskine v. Hohnbach, 14 Wall., 643; 17 Int. Rev. Rec., 19; Harding v. Woodcock, 137 U. S., 43. Assessment protects the collector.
 Stacey v. Emery, 7 Otto, 642; 24 Int. Rev. Rec., 375. Proceedings against supervisor.
 Averill, collector, v. Smith, 17 Wall., 82; 17 Int. Rev. Rec., 171. Trespass on account of a seizure. Trespass will not lie unless it appears that the act was tortious or unauthorized.
 Snyder v. Marks, 109 U. S., 189; 29 Int. Rev. Rec., 403. Injunction. A bill in equity will not lie to enjoin a collector from collecting taxes.
 United States v. J. M. Cummings et al., 130 U. S., 453; 35 Int. Rev. Rec., 142. Claim for damages alleged to have been sustained in consequence of certain acts of Collector Bailey.
 White, collector, v. Berry (1898), 170 U. S., 366. Civil-service act.

Commissions and compensation of collectors.

- United States v. Wilcox, 5 Otto, 661; 24 Int. Rev. Rec., 22.
 United States v. Fardan, 9 Otto, 10; 25 Int. Rev. Rec., 55. Suspension of collector by supervisor upon charges of fraud.
 United States v. Landram, 118 U. S., 81; 32 Int. Rev. Rec., 151.

Taxes not assessed may be sued for.

- Dollar Savings Bank v. United States, 19 Wall., 227; 19 Int. Rev. Rec., 89; 22 Int. Rev. Rec., 310.

Taxes not assessed may be sued for—Continued.

- King v. United States, 9 Otto, 229; 25 Int. Rev. Rec., 175.

Suits on collectors' bonds.

- Hall v. United States, 1 Otto, 559.
 Soule v. United States, 10 Otto, 8; 26 Int. Rev. Rec., 4. Direction of Commissioner considered as direction of Secretary.
 United States v. Kimball, 11 Otto, 726.
 United States v. Hough, 13 Otto, 71.
 Bntler v. United States, 21 Wall., 272.
 United States v. Jackson, 14 Otto, 41; 28 Int. Rev. Rec., 12.
 King v. United States, 99 U. S., 229; 25 Int. Rev. Rec., 175. Suit on the bond of Harry Chase, collector.
 United States v. Hunt, 15 Otto, 183; 28 Int. Rev. Rec., 134.
 United States v. Stone, 10 Otto, 525.
 United States v. Flanders, 112 U. S., 88; 30 Int. Rev. Rec., 397.

Compromise—power and effect.

- Dorsheimer v. United States, 7 Wall., 166; 10 Int. Rev. Rec., 131.
 United States v. Chouteau, 102 U. S., 603; 27 Int. Rev. Rec., 49.
 United States v. Ulrici et al., 102 U. S., 612; 27 Int. Rev. Rec., 51.

Brokers, banks, and bankers.

- United States v. Cutting, 3 Wall., 441.
 United States v. Fisk, 3 Wall., 445.
 Collector v. Doewell & Co., 16 Wall., 156.
 Warren v. Shook, 91 U. S., 704; 22 Int. Rev. Rec., 77.
 Selden v. Equitable Trust Company, 94 U. S., 419; 23 Int. Rev. Rec., 171.
 Bank for Savings v. Collector, 3 Wall., 495.
 Oulton v. Savings Institution, 17 Wall., 109; 17 Int. Rev. Rec., 170.
 Cary v. Savings Union, 22 Wall., 38; 21 Int. Rev. Rec., 84.
 Bailey, collector, v. Clark et al., 21 Wall., 284; 21 Int. Rev. Rec., 133.
 United States v. Wilson, 106 U. S., 620. Certificates of indebtedness issued by a corporation not taxable as circulation under section 3408, unless intended to circulate as money.
 Nevada Bank v. Sedgwick, collector, 14 Otto, 111; 27 Int. Rev. Rec., 382.
 United States v. Mann, 5 Otto, 580; 24 Int. Rev. Rec., 20. Section 3177.
 Savings Bank v. Archbold, 14 Otto, 708; 28 Int. Rev. Rec., 175.
 Slack v. Tucker & Co. (23 Wall., 330). Defining commercial broker, commission merchant, and factor.

Brokers, banks, and bankers—Continued.

- Richmond v. Blake, 132 U. S., 592; 36 Int. Rev. Rec., 21.
 Manhattan Company v. Blake, 148 U. S., 412.

Notes used for circulation, section 3418.

- Veazie Bank v. Fenno, 8 Wall., 533; 10 Int. Rev. Rec., 195. Law declared constitutional.
 United States v. Van Auker, 6 Otto, 366; 24 Int. Rev. Rec., 204. Indictment under section 3583.
 Merchants' National Bank v. United States, 101 U. S., 1. Tax on notes of a municipal corporation paid out by national bank constitutional.
 Hollister v. Zion's Cooperative Mercantile Institution, 111 U. S., 62; 30 Int. Rev. Rec., 111. Tax limited to obligations payable in money.
 Willis, collector, v. Belleville Nail Company. Same.

Stamps.

- United States v. Goldback, 102 U. S., 623. Commissions.
 Folger v. United States, 103 U. S., 30; 27 Int. Rev. Rec., 103. Assistant United States Treasurer not entitled to commissions for selling stamps.
 Jaesup v. United States, 106 U. S., 147. Bond for stamps.
 Swift Co. v. United States, 105 U. S., 691; 111 U. S., 22; 28 Int. Rev. Rec., 149. Commissions to purchasers of stamps furnishing their own dies.
 Bechtel v. United States, 101 U. S., 597. Suit on match manufacturer's bond.
 Campbell v. Wilcox, 10 Wall., 421. Stamp on note.
 United States v. Isham, 17 Wall., 496; 19 Int. Rev. Rec., 84. Liability of instrument to stamp duty depends on its form. In case of doubt as to liability the construction of the law should favor exemption.
 Pugh v. McCormick, 14 Wall., 361; 15 Int. Rev. Rec., 96.
 Hall v. Jordan, 19 Wall., 271. Stamp on deed.
 United States v. Buzzo, 18 Wall., 125. Stamp on draft.
 Hollister v. Benedict & Burnham Manufacturing Company, 113 U. S., 59; 31 Int. Rev. Rec., 30. Alleged infringement of patent.
 Fletcher v. Blake, 131 U. S., appendix; 27 Int. Rev. Rec., 6. Alleged infringement of patent.
 United States v. Kaufman, 96 U. S., 567. Action to recover value of returned special-tax stamps.
 United States v. American Tobacco Company (1897), 166 U. S., 468. Claim for reimbursement for stamps destroyed by fire.
 Nicol v. Ames; United States v. Ingwersen; 173 U. S., 509. Under Schedule A, act June 13, 1898.

Distilled spirits.

- United States v. Singer, 15 Wall., 112; 17 Int. Rev. Rec., 9. Capacity tax.
 Collector v. Beggs, 17 Wall., 182; 17 Int. Rev. Rec., 164. Capacity tax.
 Pahlman v. The Collector, 20 Wall., 189; 19 Int. Rev. Rec., 171. Capacity tax.
 Weitzel v. Rabe, 13 Otto, 340. Capacity tax.
 Weitzel v. Caldwell, 13 Otto, 340. Capacity tax.
 Weitzel v. Kayser, 13 Otto, 344. Capacity tax.

Distilled spirits—Continued.

- Peabody v. Stark, 16 Wall., 240; 17 Int. Rev. Rec., 106. Survey.
 United States v. Ferrary, 3 Otto, 625; 22 Int. Rev. Rec., 394. Survey.
 Wright v. United States, 108 U. S., 281. Survey.
 Stoll v. Pepper, 7 Otto, 438; 25 Int. Rev. Rec., 2. Tax on excise of material used.
 Felton v. United States, 6 Otto, 699; 24 Int. Rev. Rec., 252. Intent. Section 3456.
 United States v. Simmons, 6 Otto, 360; 24 Int. Rev. Rec., 347. Intent. Section 3266.
 Hartman v. Bean, 9 Otto, 393; 25 Int. Rev. Rec., 141. Lien on spirits in warehouse.
 Dair v. United States, 16 Wall., 1; 18 Int. Rev. Rec., 10. Distiller's bond.
 Thompson v. United States, 142 U. S., 471. Tax is required to be paid on spirits lost in distillery warehouse by evaporation, after the filing of export bond, but before actual withdrawal.
 One hundred and ninety-nine Barrels of Whisky v. United States, 4 Otto, 86. Burden of proof.
 United States v. Bennett, 15 Wall., 660. Bonded warehouse.
 United States v. Ford, Whisky Cases, 9 Otto, 594; 25 Int. Rev. Rec., 127. Testimony of accomplice.
 Hart v. United States, 5 Otto, 316. United States v. Witten, 143 U. S., 76; 38 Int. Rev. Rec., 46. Distiller's bond. Government not responsible for laches of officers.
 United States v. Boecker *et al.*, 21 Wall., 652; 21 Int. Rev. Rec., 78. Sureties not liable when business is carried on at a place other than that mentioned in bond.
 United States v. Hodson, 10 Wall., 395. Distiller's bond, construction of statute, revenue laws to be construed liberally.
 Finch v. United States, 12 Otto, 269; 26 Int. Rev. Rec., 410. Meter case. Section 3249.
 Tice v. United States, 99 U. S., 286. Meter case. Section 3249.
 Dobbin's Distillery v. United States, 6 Otto, 395; 24 Int. Rev. Rec., 21. Forfeiture of distillery when owner is innocent.
 United States v. Powell, 14 Wall., 493; 17 Int. Rev. Rec., 18. Storekeepers' salaries. Liability of bond.
 Insurance Companies v. Thompson, 5 Otto, 547. Spirits in warehouse destroyed by fire.
 Farrell v. United States, 9 Otto, 221; 25 Int. Rev. Rec., 83. Spirits in warehouse destroyed by fire.
 United States v. Alexander *et al.*, 110 U. S., 325. Spirits destroyed by fire.
 United States v. Ulrich *et al.*, 111 U. S., 38; 30 Int. Rev. Rec., 111. Spirits forfeited and sold subject to tax.
 United States v. Forty-three Gallons Whisky, 108 U. S., 491; 29 Int. Rev. Rec., 188. Selling spirits in Indian Territory.
 Salt Lake City v. Hollister, collector, 118 U. S., 256; 32 Int. Rev. Rec., 158. Tax on spirits distilled by the city.
 United States v. Morris Spiegel, 116 U. S., 270; 32 Int. Rev. Rec., 54. Imported spirit stamps.
 Thatcher's Distilled Spirits, 13 Otto, 679; 27 Int. Rev. Rec., 144. Section 3451.

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INTERNAL REVENUE LAWS.

OFFICE OF INTERNAL REVENUE, ORGANIZATION, APPROPRIATIONS, ETC.

[The sections enumerated in this compilation are from the Revised Statutes of the United States, unless otherwise indicated.]

Sec.	Sec.
319. Commissioner of Internal Revenue.	Act of Feb. 24, 1899. Sec. 3, Act of June 13, 1898. Officers and employees.
320. Chief clerk.	Appropriations. Reports.
321. Duties of Commissioner.	239. Accounts of receipts of internal revenue, how kept.
3671. Estimates of expenses of collecting internal revenue.	261. Report to Congress by Secretary of money received.
322. Deputy commissioner.	196. Annual report of head of Department.
323. Duties of deputy commissioner.	
349. Solicitor of internal revenue.	
173-174. Duties of chief clerk.	

SEC. 319. There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of six thousand dollars a year.

12 Op. Atty. Gen., 443; 8 Int. Rev. Rec., 54.

SEC. 320. The Commissioner of Internal Revenue is authorized to designate one of the heads of division as chief clerk of the Bureau without additional compensation.

Chief clerk.

SEC. 321. The Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, shall have general superintendence of the assessment and collection of all duties and taxes now or hereafter imposed by any law providing internal revenue; and shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue; and shall provide hydrometers, and proper and sufficient adhesive stamps and stamps or dies for expressing and denoting the several stamp duties, or, in the case of percentage duties, the amount thereof; and alter and renew or replace such stamps from time to time, as occasion may require. He may also contract for or procure the printing of requisite forms, decisions, and regulations, but the printing of such forms, decisions, and regulations shall be done at the Public Printing Office, unless the Public Printer shall be unable to perform the work: *Provided*, That the Commissioner of Internal Revenue may, under such regulations as may be established by the Secretary of the Treasury, after due public notice, receive bids and make contracts for supplying stationery,

Duties of Commissioner of Internal Revenue.

blank-books, and blanks to the collectors in the several collection-districts; and the said Commissioner shall estimate in detail by collection-districts the expense of assessing and the expense of the collection of internal revenue.

See, as to stamps, sections 3238, 3312, 3328, 3341, 3369, 3395, 3445, 3446, and other sections.

Commissioner to make assessments (§§ 3176, 3182, 3253, 3309, 3314, 3371, 3437; § 3413, amended by §§ 19, 20, and 21, act of February 8, 1875; act of May 13, 1876; § 8, act of March 3, 1877; § 6, act of March 1, 1879, fruit brandy; § 8, act of May 28, 1880, amending § 6, act of March 1, 1879; § 9, act of August 2, 1886, oleomargarine; § 28, act of October 1, 1890, opium; § 27, act of August 28, 1894, playing cards; § 10, act of June 6, 1896, filled cheese; §§ 1, 3, 31, and 41 of the act of June 13, 1898, war-revenue law).

Commissioner to make regulations (§ 3447, p. 340). See also under the different subjects.

Distinction between "instructions" and "regulations." (*Lan-dram v. United States*, 16 Ct. Clms., 74; 27 Int. Rev. Rec., 80.)

A regulation made in pursuance of an act of Congress has the force of law. (*United States v. Eliason*, 16 Pet., 291; *ex parte Reed*, 100 U. S., 13; *United States v. Barrows et al.*, 10 Int. Rev. Rec., 86; *Harvey v. United States*, 3 Ct. Clms., 38; *Stotesbury v. United States*, 23 Ct. Clms., 292.)

Scope and effect of regulations of the Department. (*In re Kollock*, 165 U. S., 526; 43 Int. Rev. Rec., 170; *United States v. Symonds*, 120 U. S., 46; *Wilkins v. United States*, U. S. Circuit Court of Appeals (1899); 96 Fed. Rep., 837; Vol. 2, Treas. Dec., No. 21623.)

Secretary of Treasury can not make regulations which will defeat the law. (*Campbell v. United States*, 107 U. S., 410.)

Regulations made by the Commissioner pursuant to the statutory authority, with the approval of the Secretary of the Treasury, in respect to the assessment and collection of internal revenue, have the force of statutes; and the acts of the Commissioner are presumed to be the acts of the Secretary. (*In re Huttman*, 70 Fed. Rep., 699.)

In *United States v. Eaton* (144 U. S., 677), it was held that "a sufficient statutory authority should exist for declaring any act or omission a criminal offense." Regulations prescribed by law may have in a proper sense the force of law, but when the statute does not distinctly make the neglect to do the thing required a criminal offense a regulation can not have that effect.

Regulations can not change the positive provisions of law. (*United States v. Two Hundred Barrels of Whisky*, 95 U. S., 571; 24 Int. Rev. Rec., 3; *Morrill v. Jones*, 106 U. S., 467.)

Court will take judicial notice of regulations prescribed in pursuance of law. (*Caha v. United States*, 152 U. S., 211; *Wilkins v. United States*, 96 Fed. Rep., 837; Vol. 2, Treas. Dec., (1899), No. 21623.)

Under Revised Statutes, sections 161, 251, 321, a regulation promulgated by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, prohibiting collectors from producing the records of their offices or furnishing copies thereof for the use of third persons or for use as evidence in behalf of litigants in any court, is a valid and binding regulation; and neither a State nor a State court has authority to require a collector to violate it, or to punish him for contempt because of his refusal to produce such records or to testify to their contents. (*In re Comingore*, Collector (1899), 96 Fed. Rep., 552, Vol. 2, Treas. Dec., No. 21584.)

CHINESE EXCLUSION AND REGISTRATION.

An act relating to Chinese exclusion and registration, approved May 5, 1892 (27 Stat., 25), known as the "Geary bill," required all Chinese laborers to register within one year, or before May 5, 1893. The number of Chinese registered up to and including May 3, 1894, was 106,811. (Comm'r's Report, 1894.)

Section 6 required certificates of residence to be obtained from collectors of internal revenue. This section was amended by the act of November 3, 1893 (28 Stat., 7), known as the "McCreary bill," which gave the Chinese six months further in which to register. (Regulations, series 7, No. 18, revised November, 1896.)

The Chinese exclusion acts have no reference to the subject of revenue. (*Williams v. United States*, 168 U. S., 382.)

SEC. 3671. The Commissioner of Internal Revenue shall estimate in detail, by collection-districts, the expense of assessing and the expense of the collection of internal revenue, and submit the same to Congress at the commencement of each regular session. Estimates of expenses of collecting internal revenue.

Statements to Congress as to expenditure of fraud fund and miscellaneous expenditures, see section [3463a], p. 349.

SEC. 322. There shall be in the office of the Commissioner of Internal Revenue a Deputy Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of three thousand five hundred dollars a year. Deputy Commissioner of Internal Revenue.

By act approved January 29, 1874 (18 Stat., 6), it is provided that this "Office of Deputy Commissioner of Internal Revenue * * * be, and the same is hereby, abolished; and that the Secretary of the Treasury may, upon the recommendation of the Commissioner of Internal Revenue, designate one of the two remaining deputy commissioners as first deputy commissioner, who shall perform the duties and be paid only the salary prescribed for the office of deputy commissioner hereby abolished."

Since the act of August 15, 1876 (Legislative appropriation bill for fiscal year ending June 30, 1877), the appropriations have provided for only one Deputy Commissioner.

See section 235 R. S., and Supplement to Revised Statutes, vol. 1, p. 3.

(15 Op. Atty. Gen., 6.)

SEC. 323. The Deputy Commissioner of Internal Revenue shall be charged with such duties in the office of the Commissioner of Internal Revenue as may be prescribed by the Secretary of the Treasury, or by law, and shall act as Commissioner of Internal Revenue in case of the absence of that officer. Duties of Deputy Commissioner of Internal Revenue.

Vacancies occurring by death, resignation, absence, or sickness of chief of a bureau, how temporarily filled (§§ 178, 179, 180, R. S.)

SEC. 349. There shall be in the Department of Justice * * * a Solicitor of Internal Revenue, * * * who shall be appointed by the President, by and with the advice and consent of the Senate. * * * Solicitor of Internal Revenue.

The salary of the Solicitor of Internal Revenue, as appropriated by the last appropriation act, is \$4,500.

A Solicitor of Internal Revenue was added to the Internal Revenue Office corps by the act of July 13, 1866 (14 Stat., 170), but by the act of June 22, 1870 (16 Stat., 162), organizing the Department of Justice, the Solicitor was formally transferred to that Department. He is the law officer and law adviser of the Commissioner. The only duties of which mention is made by law are in connection with compromise cases, section 3229, p. 111.

SEC. 173. Each chief clerk in the several Departments and Bureaus, and other offices connected with the Departments, shall supervise, under the direction of his immediate Chief clerk to supervise duties of other clerks.

superior, the duties of the other clerks therein, and see that they are faithfully performed.

Chief clerk to
distribute duties.

SEC. 174. Each chief clerk shall take care, from time to time, that the duties of the other clerks are distributed with equality and uniformity, according to the nature of the case. He shall revise such distribution from time to time for the purpose of correcting any tendency to undue accumulation or reduction of duties, whether arising from individual negligence or incapacity, or from increase or diminution of particular kinds of business. And he shall report monthly to his superior officer any existing defect that he may be aware of in the arrangement or dispatch of business.

SEC. 175 directs what action the chief of a bureau or other superior officer shall take upon receiving the monthly report of his chief clerk, rendered pursuant to section 174.

SEC. 166 R. S. as amended by act of May 28, 1896 (29 Stat., 140) provides in regard to distribution of clerks and details.

[Extract from appropriation act (legislative, executive, and judicial) for the fiscal year ending June 30, 1900, act of February 24, 1899, (30 Stat., 861)].

Office force and
salaries.

Office of the Commissioner of Internal Revenue.—For Commissioner of Internal Revenue, six thousand dollars; deputy commissioner, four thousand dollars; chemist, two thousand five hundred dollars; two heads of divisions, at two thousand five hundred dollars each; four heads of divisions, at two thousand two hundred and fifty dollars each; superintendent of stamp vault, two thousand dollars; stenographer, one thousand eight hundred dollars; twenty-four clerks of class four; twenty-four clerks of class three; thirty-four clerks of class two; twenty-four clerks of class one; thirteen clerks, at one thousand dollars each; forty clerks, at nine hundred dollars each; two messengers; fourteen assistant messengers; and thirteen laborers; in all, two hundred and fifty-seven thousand six hundred and forty dollars.

For one stamp agent, one thousand six hundred dollars, and one counter, nine hundred dollars; in all, two thousand five hundred dollars, the same to be reimbursed by the stamp manufacturers.

The act of August 2, 1886 (24 Stat., 209), provided for "an analytical chemist and a microscopist, who shall each be appointed by the Secretary of the Treasury, and shall each receive a salary of two thousand five hundred dollars per annum;" and provided that "the Commissioner of Internal Revenue may, whenever in his judgment the necessities of the service so require, employ chemists and microscopists, to be paid such compensation as he may deem proper, not exceeding in the aggregate any appropriation made for that purpose."

There has been no appropriation for a microscopist since July 1, 1895.

As to officer's right to whole amount of the annual salary fixed by the Revised Statutes, although Congress has appropriated a less amount as compensation for the fiscal year. (Wallace's case, 2 Lawrence Dec., 376; 28 Int. Rev. Rec., 271; Fisher's case, 15 Ct. Clms., 323; 109 U. S., 143.)

Form of oath, section 1757, R. S. Test oath (§ 1756) repealed act May 13, 1884 (23 Stat., 21).

Oath of office to employees taken without charge. Act of August 29, 1890 (26 Stat., 370).

Extra compensation not allowed. Act June 20, 1874 (18 Stat., 109), see p. 397.

Transfer of duties to clerks of lower class. Section 3, act August 15, 1876 (19 Stat., 143), see p. 401.

Employees to be paid from specific appropriations. Act August 5, 1882 (22 Stat., 255), see p. 401.

Temporary detail of clerks. Section 166, R. S., as amended by section 3 of the act of May 28, 1896 (29 Stat., 140).

President's authority to prescribe regulations concerning appointment. (§ 1753, R. S., p. 400.)

Veteran preference in appointment to public office. (§ 1754, R. S., p. 400.)

Correspondence with the Office of Internal Revenue. (Int. Rev. Circular No. 550. Vol. 3, Treas. Dec. (1900), No. 29.)

Formulas for official communications (Circular No. 114, Sept. 12, 1899; Vol. 2, Treas. Dec., No. 21580).

An act to regulate and improve the civil service of the United States (civil-service act). Act January 16, 1883 (22 Stat., 403).

Amendments to the civil-service rules approved by the President May 29, 1899. Removals. (Rule 2, section 8, as amended.)

8. No removal shall be made from the competitive classified service except for just cause and for reasons given in writing; and the person sought to be removed shall have notice and be furnished a copy of such reasons, and be allowed a reasonable time for personally answering the same in writing. Copy of such reasons, notice, and answer, and of the order of removal, shall be made a part of the records of the proper Department or office; and the reasons for any change in the rank or compensation within the competitive classified service shall also be made a part of the records of the proper Department or office.

Circular No. 141, November 29, 1899, as to provisions of Executive order of May 29, 1899, relative to removal from the competitive classified service. (Vol. 1, Treas. Dec., No. 21807.)

Reinstatements. (Rule IX, as amended. Extract.)

And provided further, That, subject to the other conditions of these rules, any person who has served in the military or naval service of the United States in the late war of the rebellion or in the Spanish-American war and was honorably discharged therefrom, or the widow of any such person, or an army nurse of either of said wars, and any person who has been separated from the service by reason of a reduction of force specifically required by law, may be reinstated without regard to the length of time he or she has been separated from the service:

And provided further, That any person dismissed from the service upon charges of delinquency or misconduct may be reinstated, subject to the other conditions of these rules, without regard to the one-year time limit of this rule, upon the certificate of the proper appointing officer that he has thoroughly investigated the case and that the charges upon which the dismissal was based were not true.

With the exception of section 13 of the act of January 16, 1883, which prohibits promotion, degradation, removal, or discharge of any officer or employee for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, no legislative declaration expressly bearing upon removals from office is made.

Civil-service rules promulgated by the Executive, so far as they deal with the Executive right of removal, are but expressions of the will of the President, and are regulations imposed by him upon his own action, or that of heads of Departments appointed by him. They do not give the employees within the classified civil service any such tenure of office as to confer upon them a property right in the office or place. (Morgan v. Nunn (1898), 84 Fed. Rep., 551.) (Page v. Moffett, 85 Fed. Rep., 38; Vol. 1, Treas. Dec. (1898), No. 19027.)

SEC. 7. *Act of March 15, 1898 (30 Stat., 317).* (Legislative, executive, and judicial appropriation act.) That section five of the Act making appropriations for legislative, executive, and judi-

cial expenses, approved March third, eighteen hundred and ninety-three, is hereby amended to read as follows:

Seven hours' time required of clerks and other employees.

Hereafter it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employees, of whatever grade or class, in their respective Departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law or Executive order: *Provided*, That the heads of the Departments may, by special order, stating the reason, further extend the hours of any clerk or employee in their Departments, respectively; but in case of an extension it shall be without additional compensation: *Provided further*, That the head of any Department may grant thirty days' annual leave with pay in any one year to each clerk or employee: *And provided further*, That where some member of the immediate family of a clerk or employee is afflicted with a contagious disease and requires the care and attendance of such employee, or where his or her presence in the Department would jeopardize the health of fellow-clerks, and in exceptional and meritorious cases, where a clerk or employee is personally ill, and where to limit the annual leave to thirty days in any one calendar year would work peculiar hardship, it may be extended, in the discretion of the head of the Department, with pay, not exceeding thirty days in any one case or in any one calendar year.

Thirty days' annual leave with pay.

Thirty days' additional annual leave in case of sickness, etc.

This section shall not be construed to mean that so long as a clerk or employee is borne upon the rolls of the Department in excess of the time herein provided for or granted that he or she shall be entitled to pay during the period of such excessive absence, but that the pay shall stop upon the expiration of the granted leave. * * *

Circular relative to recording time. (Circular No. 46, March 24, 1899, Vol. 1, Treas. Dec., 20902.)

It shall be the duty of the heads of the several Executive Departments of the Government to report to Congress each year in the annual estimates the number of employees in each bureau and office and the salaries of each who are below a fair standard of efficiency. (§ 2, act of July 11, 1890, Sup. R. S., vol. 1, 2d ed., p. 773.)

Temporary clerks.

SEC. 3. *Act of June 13, 1898 (30 Stat., 448).* * * * And for the expense connected with the assessment and collection of the taxes provided by this Act there is hereby appropriated the sum of one hundred thousand dollars, or so much thereof as may be required, out of any moneys in the Treasury not otherwise appropriated, for the employment of such deputy collectors and other employees in the several collection districts in the United States, and such clerks and employees in the Bureau of Internal Revenue as may, in the discretion of the Commissioner of Internal Revenue, be necessary for a period not exceeding one year, to be compensated for their services by such allowances as shall be made by the Secretary of the Treasury, upon the recommendation of the Commissioner of Internal Revenue.

Section 47 of the act of June 13, 1898 (mixed-flour act), (p. 284) authorized the employment of additional clerks and agents not to exceed twenty.

The act making appropriation to supply deficiencies in the appropriations for the fiscal year 1898 and for prior years, etc., approved July 7, 1898 (30 Stat., 705), provided for an appropriation of \$500,000 for additional temporary force in the Internal-Revenue Service, to be available during the fiscal year 1899, the office force in the Internal-Revenue Bureau to be appointed by the Secretary of the Treasury on the recommendation of the Commissioner of Internal Revenue.

SEC. 3. *Act of February 24, 1899 (30 Stat., 839).* (Legislative, executive, and judicial appropriation act, 1900.) That the term of temporary service of such additional clerks and other employees rendered necessary because of increased work incident to the war with Spain who have been appointed in the various departments of the government under the provisions of "An Act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for prior years, and for other purposes," approved July seventh, eighteen hundred and ninety-eight, shall be extended for the term of one year, without compliance with the conditions prescribed by the Act entitled "An Act to regulate and improve the civil service," approved January sixteenth, eighteen hundred and eighty-three, provided they are otherwise competent.

Term of temporary service extended.

SEC. 4. That the appropriations herein made for the officers, clerks, and persons employed in the public service shall not be available for the compensation of any persons permanently incapacitated for performing such service. The establishment of a civil pension roll or an honorable service roll, or the exemption of any of the officers, clerks, and persons in the public service from the existing laws respecting employment in such service, is hereby prohibited: *Provided*, That the thirty days' annual leave of absence with pay in any one year to clerks and employees in the several Executive Departments authorized by existing law shall be exclusive of Sundays and legal holidays.

No honorary service roll.

30 days' annual leave of absence.

COLLECTING INTERNAL REVENUE.

[Extract from Legislative, executive, and judicial appropriation act for 1900 (act of February 24, 1899). (30 Stat., 865.)]

For salaries and expenses of collectors and deputy collectors and surveyors, and clerks, including transportation of public funds, and also including expenses of enforcing the Act of August second, eighteen hundred and eighty-six, taxing oleomargarine, and the Act of August fourth, eighteen hundred and eighty-six, imposing upon the Government the expense of the inspection of tobacco exported; also the Act of June sixth, eighteen hundred and ninety-six, imposing a tax on filled cheese, one million seven hundred and ten thousand dollars.

Salaries and expenses of collectors and deputy collectors, etc.

For the additional clerks and other employees in the Office of the Commissioner of Internal Revenue and for salaries and expenses of increased force of deputy collectors, rendered necessary by the Act of June thirteenth, eighteen hundred and ninety-eight, providing for war expenditures, and for other purposes, and for salaries and

Additional clerks.

expenses of ten additional agents provided for in section three, and the twenty additional clerks and agents provided for in section forty-seven of said Act of June thirteenth, eighteen hundred and ninety-eight, six hundred and fifty thousand dollars.

Salaries of agents, etc.

For salaries and expenses of agents, fees and expenses of gaugers, salaries and expenses of storekeepers and storekeeper-gaugers, and miscellaneous expenses, one million nine hundred thousand dollars.

That hereafter law books, books of reference, and periodicals for use of any Executive Department, or other Government establishment not under an Executive Department, at the seat of government, shall not be purchased or paid for from any appropriation made for contingent expenses or for any specific or general purpose unless such purchase is authorized and payment therefor specifically provided in the law granting the appropriation. [Section 3, Legislative, executive, and judicial appropriation act, approved March 15, 1898 (30 Stat., 277).]

Provided, That necessary books of reference and periodicals for the chemical laboratory and law library, at a cost not to exceed one hundred dollars, may be purchased out of the appropriation made for the fiscal year nineteen hundred for salaries and expenses of agents and surveyors, fees and expenses of gaugers, salaries of storekeepers, and for miscellaneous expenses. [Sundry civil appropriation act for 1900, act March 3, 1899 (30 Stat., 1091).]

Books of reference defined. (VI, Comp. Dec., 227, 312.)

Monthly salaries. Method of prorating for fractional part of a month. (II, Comp. Dec., 81.)

Government salary tables. (III, Comp. Dec., 461.)

SEC. 7. *Act of March 15, 1898 (30 Stat., 316). (Legislative, executive, and judicial appropriation act for 1899.)* * * * Hereafter

Monthly reports on condition of business.

it shall be the duty of the head of each Executive Department to require monthly reports to be made to him as to the condition of the public business in the several bureaus or offices of his Department at Washington; and in each case where such reports disclose that the public business is in arrears, the head of the Department in which such arrears exist shall require, as provided herein, an extension of the hours of service to such clerks or employees as may be necessary to bring up such arrears of public business.

Quarterly reports.

Hereafter it shall be the duty of the head of each Executive Department, or other Government establishment at the seat of government, not under an Executive Department, to make at the expiration of each quarter of the fiscal year a written report to the President as to the condition of the public business in his Executive Department or Government establishment, and whether any branch thereof is in arrears.

Accounts of receipts of internal revenue.

SEC. 239. Separate accounts shall be kept at the Department of the Treasury of all moneys received from internal duties or taxes in each of the respective States, Territories, and collection-districts, and of the amount of each species of duty and tax that shall accrue; so as to exhibit, as far as may be, the amount collected from each source of revenue, with the moneys paid as compensation and for allowances to the collectors and deputy collectors, inspectors, and other officers employed in each of the respective States, Territories, and collection districts.

SEC. 261. The Secretary of the Treasury shall annually, in the month of December, lay before Congress an abstract, in tabular form, of the separate accounts of moneys received from internal duties or taxes in each of the respective States, Territories, and collection-districts, required by section two hundred and thirty-nine, to be kept at the Treasury.

Abstract of receipts from internal taxes.

Annual detailed report of receipts and expenditures. Section 15, act of July 31, 1894 (28 Stat., 210).

SEC. 196. The head of each Department, except the Department of Justice, shall furnish to the Congressional Printer copies of the documents usually accompanying his annual report, on or before the first day of November in each year, and a copy of his annual report on or before the third Monday in November in each year.

Annual report of head of Department.

Provided, That of the reports of * * * the Commissioner of Internal Revenue, * * * the usual number only shall be printed. Act of January 12, 1895 (28 Stat., 601); Snpp., R. S., Vol. 2, p. 356).

No head of any Executive Department, or of any bureau, branch, or office of the Government, shall cause to be printed, nor shall the Public Printer print, any document or matter except that which is authorized by law and necessary to the public business; and executive officers, before transmitting their annual reports, shall carefully examine the same and all accompanying documents, and exclude therefrom all matter, including engravings, maps, drawings, and illustrations, except such as they shall certify in their letters transmitting such reports are necessary and relate entirely to the transaction of the public business. Section 94, act of January 12, 1895 (28 Stat., 601).

No printing and binding shall be done by the Public Printer for the several Executive and Judicial Departments of the Government in any fiscal year in excess of the amount of the allotment for such Departments, and none shall be done without a special requisition, signed by the chief of the Department and filed with the Public Printer; but this restriction shall not be so construed as to prevent the Public Printer from executing printing and binding authorized by special appropriations for any of said Departments.

Heads of Executive Departments shall direct whether reports made to them by bureau chiefs and chiefs of divisions shall be printed or not.

No report, document, or publication of any kind distributed by or from an Executive Department or Bureau of the Government shall contain any notice that same is sent with "the compliments" of an officer of the Government. Sundry civil appropriation act for 1893. Act of August 5, 1892 (27 Stat., 388).

TITLE XXXV (REVISED STATUTES).

INTERNAL REVENUE.

CHAPTER ONE.

OFFICERS OF INTERNAL REVENUE.

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|---|---|
| Sec. | Sec. |
| 3140 (amended). Definitions. | Act July 7, 1884. Officers in commission not to exceed 15 per cent of the number employed. |
| 3141. Collection districts. | |
| 3142. Collectors. | 3158. Statement under oath of fees, etc.; penalty. |
| 3143 (amended). Collectors' bonds. | 3159. <i>Repealed.</i> |
| 3144 (amended). Collectors to be disbursing agents. | 3160. <i>Repealed.</i> |
| 3145. (Obsolete.) | 3161. Officers in charge of exportation and drawbacks. |
| 3146. Accounts of collectors adjusted according to fiscal year. | 3162. Collectors and superintendents of exports may administer oaths. |
| 3147. Apportionment of compensation of collectors. | 3163 [and 3163a] (amended). Duties of collectors and internal-revenue agents. Commissioner may transfer and suspend certain officers. |
| [3148]. Secs. 12 and 13, act February 8, 1875, as amended. Collectors' compensation and allowances. Deputy collectors and their salaries. | [3163b]. Transfer of storekeepers, and storekeepers and gaugers, and compensation. |
| 3149 (amended). Disability or vacancy in office of collector. | 3164. Collectors to report violations of law to district attorney. |
| 3150. Deputy collector, when entitled to collector's salary. | 3165 (amended). Revenue officers who may administer oaths and take evidence. |
| 3151. <i>Repealed.</i> | 3166. Revenue officers specially authorized to make seizures. |
| 3152 (amended). Internal revenue agents. | 3167 (amended). Revenue officers disclosing operations of manufacturers, etc.; penalty. |
| [3152a]. Additional agents. | 3168. Officers not to be interested in certain manufactures; penalty. |
| 3153. Storekeepers' salaries and bonds. | 3169. Officers guilty of extortion, receiving unlawful fees, and other unlawful acts; penalty. |
| [3153a]. Office of storekeeper and gauger. | [3169a]. Collectors, etc., issuing stamps before payment; penalty. |
| [3153b]. Storekeepers at distilleries that mash less than 60 bushels of grain per day. | [3169b]. Laws imposing punishment on internal-revenue officers applied to certain other classes of persons. |
| [3153c]. Storekeepers at distilleries whose registered capacity is 20 bushels or less. | 3170. District attorney or marshal accepting or demanding anything for compromise of violations of law. |
| [3153d]. Assignment of storekeeper and gauger. | 3171. Officers suffering injuries may maintain suit for damages. |
| 3154. Assignment and transfer of storekeepers. | |
| [3154a.] Compensation of storekeepers and gaugers. | |
| 3155. Temporary storekeepers. | |
| 3156. Gaugers. | |
| [3156a]. Assignment of gaugers. | |
| 3157. Gaugers' fees. | |
| [3157a]. Same. | |
| [3157b]. Gaugers only paid for actual service. | |
| [3157c]. Act July 7, 1898. Gaugers' compensation. | |

Definitions.

SEC. 3140, as amended by the act of February 27, 1877 (19 Stat., 240). The word "State," when used in this Title, shall be construed to include the Territories and the District of Colum-

bia, where such construction is necessary to carry out its provisions. *And where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word "person," as used in this title, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person.*

SEC. 1. R. S. In determining the meaning of the Revised Statutes, or of any act or resolution of Congress passed subsequent to February twenty-fifth, eighteen hundred and seventy-one, words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; words importing the masculine gender may be applied to females; * * * the word "person" may extend and be applied to partnerships and corporations, and the reference to any officer shall include any person authorized by law to perform the duties of such office, unless the context shows that such words were intended to be used in a more limited sense; and a requirement of an "oath" shall be deemed complied with by making affirmation in judicial form.

SEC. 2. The word "county" includes a parish, or any other equivalent subdivision of a State or Territory of the United States.

SEC. 3. The word "vessel" includes every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 4. The word "vehicle" includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.

SEC. 5. The word "company" or "association," when used in reference to a corporation, shall be deemed to embrace the words "successors and assigns of such company or association," in like manner as if these last-named words, or words of similar import, were expressed.

Person includes corporations. (23 Int. Rev. Rec., 141; 15 Op. Atty. Gen., 230.) The term "corporation," as used in the acts of Congress touching internal revenue, does not include a State. (*Georgia v. Atkins*, collector, 8 Int. Rev. Rec., 113.) The term "person" does not include a State. (12 Op. Atty. Gen., 176.)

As to the meaning of the term revenue law. (*United States v. Hill*, 123 U. S., 681.)

Collection dis-
tricts.

SEC. 3141. For the purpose of assessing, levying, and collecting the taxes provided by the internal-revenue laws, the President may establish convenient collection-districts, and for that purpose he may subdivide any State, Territory, or the District of Columbia, or may unite two or more States or Territories into one district, and may from time to time alter said districts: *Provided*, That the number of districts in any State shall not exceed the number of Representatives in Congress to which such State was entitled in the Thirty-seventh Congress, except in such States as were entitled to an increased representation in the Thirty-eighth Congress, in which States the number of districts shall not exceed the number of Representatives to which any such State was so entitled: *And provided further*, That in the State of California the President may establish a number of districts not exceeding the number of Senators and Representatives to which said State *was* entitled, in the Thirty-seventh Congress.

Verbal error
corrected.
Act Feb. 27,
1877 (19 Stat., 2C).

The power of the President to change or alter collection districts considered. (10 Op. Atty. Gen., 469; 12 Op. Atty. Gen., 51; 14 Op. Atty. Gen., 215.)

For list of internal-revenue collection districts in the United States, with location of collectors' offices, see page 33.

Collectors.

SEC. 3142. The President, by and with the advice and consent of the Senate, shall appoint for each collection-district a collector, who shall be a resident of the same. When two or more collection-districts are united by him, he may designate from among the existing officers of such districts one collector for the new district, or, at his discretion, he may make a new appointment of such officer for said district.

The legislative appropriation act for 1877, passed August 15, 1876 (19 Stat., 152), reduced the number of internal-revenue districts to 131.

The appropriation act for 1878, passed March 3, 1877 (19 Stat., 303), reduced the number to 126.

Executive order of June 25, 1883, as modified by orders of June 30, 1883, and October 13 and December 5, 1883, reduced the number of districts from 126 to 84.

Executive order of February 13, 1884, reestablished the district of Nevada (which in 1883 was consolidated with Fourth California), making the number of districts 85.

The number of districts was reduced from 85 to 63 by Executive order of May 21, 1887. (33 Int. Rev. Rec., 157.)

Under existing law there is no limitation placed on the term of office of collectors of internal revenue, and in this respect this office differs from other civil officers of the Government. (Commissioners' reports, 1877 and 1881.)

Judicial notice will be taken of the official character and the official acts of the collector and his deputy. (Leach v. Snyder (1886), 112 Pa., 161.)

SEC. 238. The commissions of all officers employed in levying or collecting the public revenue shall be made out and recorded in the Department of the Treasury, and the seal of the Department affixed thereto. But the seal shall not be affixed to any such commission before the same has been signed by the President.

SEC. 3143, *as amended by section 2, act March 1, 1879 (20 Stat., 327), and by section 5, act March 2, 1895 (28 Stat., 807).* Every collector, before entering upon the duties of his office, shall execute a bond for such amount as may be prescribed by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, with not less than five sureties, to be approved by the Solicitor of the Treasury, conditioned that said collector shall faithfully perform the duties of his office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the order or regulations of the Secretary of the Treasury, all public moneys which may come into his hands or possession; and he shall, from time to time, renew, strengthen, and increase his official bond, as the Secretary of the Treasury may direct, with such further conditions as the said Commissioner shall prescribe; *and he shall execute a new bond whenever required so to do by the Secretary of the Treasury, with such conditions as may be required by law or prescribed by the Commissioner of Internal Revenue, with not less than five sureties; which new bond shall be in lieu of any former bond or bonds of such collector in respect to all liabilities accruing after the date of its approval by the Solicitor of the Treasury.* Said bonds shall be filed in the office of the Secretary of the Treasury. Collectors' bonds.

Proceedings against delinquent collectors. (§§ 3624, 3625, 3633, Appendix, p. 381.)

Claims for credit in suits brought by the United States. (§ 951, p. 391.)

Allowance to collectors; set-offs. (*Hall v. United States*, 91 U. S. (1 Otto), 559.)

Gaugers' fees received by collectors; Treasury settlements. (*Soule et al. v. United States*, 100 U. S. (10 Otto), 8; 26 Int. Rev. Rec., 4.)

Due diligence. (*United States v. Kimball*, 101 U. S. (11 Otto), 725.)

Money received from sale of stamps; use of old form of bond. (*United States v. Hough*, 103 U. S. (13 Otto), 71.)

Bond not void because district is not stated. (*United States v. Jackson*, 104 U. S. (14 Otto), 41; 28 Int. Rev. Rec., 12.)

Collectors' receipts; certified transcripts. (*United States v. Hunt*, 105 U. S. (15 Otto), 183; 28 Int. Rev. Rec., 134.)

Evidence. (*United States v. Stone*, 106 U. S. (16 Otto), 525.)

The addition of a condition, not specifically named in the act of Congress, that obligors shall not be liable if each and every deputy appointed by the collector shall truly and faithfully execute and discharge all the duties of such deputy collector according to law, does not relieve the sureties from liability. Mode of settling accounts of collectors; mode of prosecuting suits, etc. (*Chadwick v. United States*, 3 Fed. Rep., 750.)

Collector approving worthless bonds; liability of bond for loss sustained by Government. (*United States v. Thorn*, 9 Int. Rev. Rec., 65.)

Sureties liable for taxes collected and not accounted for. (*United States v. Harry Chase et al.*, 22 Int. Rev. Rec., 11; *King v. United States*, 99 U. S., 229.)

Liability of sureties when duties are imposed on principal by laws subsequent to the execution of the bond. (*United States v. McCartney*, 26 Int. Rev. Rec., 28.) This question and other questions relating to sureties on official bonds considered. (30 Int. Rev. Rec., 161, 166.)

Question of credits, time when compensation commences. (*United States v. Flanders*, 112 U. S., 88; 30 Int. Rev. Rec., 397.)

Liability of a surety on an official bond is *stricti juris*; surety not to be held responsible for the conduct of his principal beyond the scope of his undertaking reasonably construed. (*United States v. Adams et al.*, 31 Int. Rev. Rec., 261.)

In a suit on collector's bond, where one of the sureties had signed the bond in blank already signed by the principal, with an understanding with the principal that only a certain amount was to be inserted therein as penalty, and with the further understanding that two additional sureties were to be furnished, each worth a certain sum, and where the bond was afterwards completed by the insertion of an amount larger than that agreed upon, and signed by two worthless sureties, and afterwards the bond was delivered to the proper officer of the Government, who accepted it in the belief that it was properly executed and with no notice of the private agreement, held that the first surety was liable. Case not distinguished in principle from *Dair v. United States* (16 Wall., 1). (*Butler v. United States*, 21 Wall., 272.)

A judgment against a defaulting collector does not bind a surety on his bond unless the surety was a party to the action; and no Federal statute creates a lien on the property of a collector of internal revenue or his sureties from the execution of his official bond, or from the date of any default thereon. (*United States v. Ingates*, Circuit Court, S. D. Ala. (1891); 48 Fed. Rep., 251.)

Accounts must be stated to show liability under each bond. (*United States v. Barton Abel*; 15 Int. Rev. Rec., 41 and 50.)

A bond takes effect upon its acceptance and approval. (19 How., 73.)

Public officers liable for all moneys that come into their hands officially. (*United States v. Prescott*, 3 How., 378.)

The payment of money to the deputy collector without receiving stamps therefor was not a payment of the tax on the brandy; the money did not become public money in the hands of the collector, and the sureties were not liable for it. (*United States v. Hlrmance et al.*, 15 Blatch., 6.)

Liabilities of sureties on temporary bond. (*United States v. Kirkpatrick*, 9 Wheat., 720.)

Where under the act of March 2, 1895, which provides that "every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates," an officer renews his bond by giving a bond during the same term of office, the new bond does not operate to release the sureties on the first bond from liability for future transactions, but the sureties on the old and new bonds are jointly and severally liable therefor. (5 Comp. Dec., 918.)

The collector's bond is a contract for the indemnity of the United States alone and not for the indemnity of private persons. (*Clark v. United States*, 60 Ga., 156.)

The direction of the Commissioner to execute a new bond must be considered as the direction of the Secretary of the Treasury. (*Soule v. United States*, 100 U. S., 8.)

If the name of a person in a written instrument was wrong, or applies to a wrong person, the court will correct it by construction, when it is apparent upon the face of the instrument that the error exists and in what manner it should be corrected to carry out the intention of the parties. (*Richmond v. Woodward*, 32 Vt., 283.)

There must not be less than five sureties to a bond of collector of internal revenue if the sureties are individuals; but one corporate surety, duly qualified as provided by the act of Congress of August 13, 1894, may be accepted. (Department Circular No. 191, October 12, 1897.)

No surety can hold office under his principal. (Department Circular No. 191, October 12, 1897; 43 Int. Rev. Rec., 438.)

Sureties can not be relieved from bonds at their request. (30 Int. Rev. Rec., 197.)

Notice of deficiency in accounts of principals to be given to sureties upon bonds of United States officials; limitation of time within which suit shall be brought against sureties on said bond. (Act of August 8, 1888.) See p. 386.

Official bonds are to be examined every two years, and to be renewed every four years, or oftener. These bonds are to be filed with the Secretary of the Treasury. (§ 5, act of March 2, 1895, 28 Stat., 764.) See p. 61.

SEC. 3144, as amended by section 2, act of March 1, 1879 (20 Stat., 327), and by section 5 of the act of March 2, 1895 (28 Stat., 807). Collectors to act as disbursing agents.
It shall be the duty of collectors of internal revenue to act as disbursing agents of the Treasury for the payment of all expenses of collection of taxes and other expenditures for the internal revenue service within their respective districts, under regulations and instructions from the Secretary of the Treasury, on giving good and sufficient bond, with such sureties, in such form, and in such penal sum, as shall be prescribed * * * and approved by the Secretary of the Treasury, for the faithful performance of their duties as such disbursing agents; but no additional compensation shall be paid to collectors for such services.

The words "by the First Comptroller of the Treasury" omitted in view of the following act: Hereafter all bonds of * * * collectors of internal revenue, * * * either as such officers or as disbursing officers of the Treasury, * * * and all such bonds now on file in the office of the Comptroller of the Treasury, shall be transmitted to the Secretary of the Treasury and filed as he may direct; and the duties now required by law of the Comptroller of the Treasury in regard to such bonds, as the successor of the * * * First Comptroller of the Treasury, shall hereafter be performed by the Secretary of the Treasury. * * * [§ 5, act of March 2, 1895, (28 Stat., 807).]

As to duties of disbursing officers see Appendix, § 3620 et seq., p. 377.

Disbursing officers are responsible for the identity of the parties to whom they are authorized to pay money and for the genuineness of signatures to the vouchers returned by them. (*Harston v. United States*, 21 Ct. Clms., 451.)

The bond required from the collector as disbursing agent is separate from and additional to his bond as collector. (*Hall v. United States*, 17 Ct. Clms., 39. See *Chadwick v. United States*, 3 Fed. Rep., 750.)

Bond of collector as disbursing agent held to cover disbursements to storekeepers, although the office of storekeeper was created by a law passed subsequent to date of bond. (*United States v. McCartney and others*, 1 Fed. Rep., 104; 26 Int. Rev. Rec., 28.)

The sureties on this bond (if individuals) must be other than those on bond as collector; but a corporate surety, duly qualified, may be accepted as surety on both bonds.

This bond must not be executed until after the collector has fully qualified as such by executing his bond as collector and taking the oath of office. (Department Circular No. 191, October 12, 1897; 43 Int. Rev. Rec., 438.)

SEC. 3145, as to collector's salary and allowances. (*Obsolete*.) Superseded by sections 12 and 13, act of February 8, 1875, as amended. [§ 3148.]

Accounts adjusted according to fiscal year.

SEC. 3146. In adjusting the accounts of collectors, accruing after June thirtieth, eighteen hundred and sixty-four, and in the payment of their compensation for services, the fiscal year of the Treasury shall be observed.

See section 237, R. S., commencement of fiscal year. (34 Int. Rev. Rec., 197.)

Apportionment of compensation of collectors.

SEC. 3147. When any part of the compensation of the collector of any district is by commission upon assessments or¹ collections, and, in consequence of a new appointment, is due to more than one collector within the same year, such commissions shall be apportioned between such collectors; but in no case shall a greater amount of the commissions be allowed to two or more collectors in the same district than shall have been authorized by law to be allowed to one collector, and the same rules shall apply to the salaries and commissions of assessors and collectors heretofore earned and accrued.

Certificate of Commissioner required.

But no payment shall be made to collectors, on account of salaries or commissions, without the certificate of the Commissioner of Internal Revenue that all reports required by law or regulation have been received, or that a satisfactory explanation has been rendered to him of the cause of delay.

As to certificate of due diligence, see section 3218, p. 103.

[SEC. 3148.] Sec. 12. Act of February 8, 1875 (18 Stat., 309), as amended by section 2, act of March 1, 1879 (20 Stat., 327). That each collector of internal revenue shall be authorized to appoint, by an instrument in writing under his hand, as many deputies as he may think proper, to be compensated for their services by such allowances as shall be made by the Secretary of the Treasury, upon the recommendation of the Commissioner of Internal Revenue.

Deputy collectors.

¹This word "or" is erroneously printed "of" in the Revised Statutes, edition of 1878.

Allowances shall also be made in like manner for salary and office expenses of collectors, all of which shall be in lieu of the salary and commissions heretofore provided by law: Salaries of deputies and collectors.

Provided, however, That the salaries of collectors shall be fixed at two thousand dollars each per annum where the annual collections amount to twenty-five thousand dollars or less, and shall, by the Secretary, on the recommendation of the Commissioner, be graduated up to the maximum limit of four thousand five hundred dollars; which latter sum shall be allowed in all cases where the collections amount to one million of dollars or upward; and the collector shall have power to revoke the appointment of any such deputy, giving such notice thereof as the Commissioner of Internal Revenue may prescribe, and to require and accept bonds or other securities from any deputy; and actions upon such bonds may be brought in any appropriate district or circuit court of the United States; which courts are hereby given jurisdiction of such actions concurrently with the courts of the several States.

Each such deputy shall have the like authority in every respect to collect the taxes levied or assessed within the portion of the district assigned to him which is by law vested in the collector himself; but each collector shall, in every respect, be responsible, both to the United States and to individuals, as the case may be, for all moneys collected, and for every act done or neglected to be done, by any of his deputies while acting as such. Deputy collector's authority and responsibility.

Held that the right of collectors to commissions on taxes collected by the sale of tax-paid spirit stamps (§ 3314, p. 194) was not taken from them by the act of March 1, 1879. But the total net compensation of collectors can not in any case exceed \$4,500 per annum. (United States v. Landram, 32 Int. Rev. Rec., 151; 118 U. S., 81.)

As to compensation for duties performed before taking oath. (United States v. Flanders, 112 U. S., 88; 30 Int. Rev. Rec., 397.)

Additional allowance of salary to collectors. (Utah Case, 2 Lawrence Dec., 559; 28 Int. Rev. Rec., 293.)

An action by a collector of internal revenue against a deputy collector on his official bond may be removed from the State court to the Federal court under the act of March 3, 1875. (Orner v. Saunders, 3 Dillon, 284.)

A deputy collector is authorized to act as such when his commission has been signed and placed in the mail and he is notified thereof by telegram. (United States v. Sykes, 58 Fed. Rep., 1000.)

Compensation of collectors can not be revised by the courts. (United States v. Hall, 2 Dillon, 426; 91 U. S., 559.)

Deputy collectors of internal revenue are appointed under section 3148, R. S., and the power of removal rests with the appointing power, the collector, subject to such requirements as to notice as the Commissioner of Internal Revenue may prescribe, and such action can not be reviewed by an appeal to the courts. (Page v. Moffett, collector, U. S. Circuit Court, Dist. of N. J., 85 Fed. Rep., 38; Vol. 1, Treas. Dec. (1898), p. 338, No. 19027.)

Court of equity will not, by injunction, restrain a collector from making a removal of a subordinate employee. (Morgan v. Nunn, collector, U. S. Circuit Court, middle Dist. of Tenn., 84 Fed. Rep., 551; Vol. 1, Treas. Dec. (1898), No. 19027; White, collector, v. Berry (1898), 170 U. S., 366.)

Civil-service law, regulations, and decisions. Application as to removal of subordinates in office of Collector. (Vol. 1, Treas. Dec. (1898), No. 19027.)

All deputy collectors of internal revenue who are borne on the rolls as such and the allowance for whose salaries is approved by the Secretary of the Treasury are excepted from the classified service: *Provided*, That no position designated as a clerkship under a collector of internal revenue, appointment to which is made by the Secretary of the Treasury, shall be discontinued for the purpose of substituting a deputy collectorship therefor, or for any purpose other than a bona fide reduction of force, and that before such reduction shall be made the reasons therefor shall be given in writing by the collector of the district and shall be approved by the Commissioner of Internal Revenue and the Secretary of the Treasury. (Amendment to the civil service rules approved by the President, May 29, 1899.)

Relative to revision of the civil-service rules promulgated May 29, 1899. (Circular No. 538, revised July 17, 1899, Vol. 2, Treas. Dec., No. 21397.)

Circular No. 449, December 9, 1895. Expenses of subordinate officers. (41 Int. Rev. Rec., 537.)

Assignment of deputy collectors of internal revenue to special or general duty. (Circular letter May 12, 1899, Vol. 1, Treas. Dec., No. 21150.)

Deputy collectors' diary report and monthly account for services. (Int. Rev. Circular No. 537, Vol. 1, Treas. Dec. (1899), No. 21259.)

Entire time of deputy collectors must be devoted to official duties. (Circular No. 532, May 11, 1899, Vol. 1, Treas. Dec., No. 21149.)

SEC. 13. *Act February 8, 1875 (18 Stat., 307), as amended by section 2, act of March 1, 1879 (20 Stat., 327).* That there shall be further paid, after the account thereof has been rendered to and approved by the proper officers of the Treasury, to each collector, his necessary and reasonable charges for advertising, stationery, and blank books used in the performance of his official duties, and for postage actually paid on letters and documents received or sent and exclusively relating to official business, but no such account shall be approved or allowed unless it states the date and the particular items of every such expenditure, and shall be verified by the oath of the collector: *Provided*, That the Secretary of the Treasury, on the recommendation of the Commissioner of Internal Revenue, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal duties collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered.

Collectors' advertising, stationery, etc.

Further allowances.

Maximum net compensation of collector.

But the total net compensation of a collector shall not in any case exceed four thousand five hundred dollars a year; and no collector shall be entitled to any portion of the salary pertaining to the office unless such collector shall have been confirmed by the Senate, except in cases of commissions to fill vacancies occurring during the recess of the Senate.

Deputy collector's pay. (Herndon's claim, 26 Int. Rev. Rec., 314; Herndon v. United States, 15 Ct. Clms., 446; 26 Int. Rev. Rec., 198; Wilson's case, 2 Lawrence Dec., 206.)

Salary of deputy collector. Are deputy collectors officers? (Landram v. United States, 16 Ct. Clms., 74; 27 Int. Rev. Rec. 80.) See note under section 3169, p. 76.

Questions of salary are questions of contract, and the Government can be sued in Court of Claims when it fails to pay collector his salary. (*Patton v. United States*, 7 Ct. Clms., 362.)

Compensation of collectors and deputy collectors (series 7, No. 2, revised, p. 78).

The salary of an officer begins from date of taking oath and entering on duty. (IV Comp. Dec., 59.)

SEC. 3149, as amended by section 2, act of March 1, 1879. (20 Stat., 327.) In case of the sickness or absence of a collector, or in case of his temporary disability to discharge his duties, they shall devolve upon his senior deputy, unless he shall have devolved them upon another of his deputies; and for the official acts or defaults of such deputies the collector and his sureties shall be held responsible to the United States.

Disability or vacancy in office of collector.

In case of a vacancy occurring in the office of collector, the deputies of such collector shall continue to act until his successor is appointed; and until a successor is appointed, the deputy of such collector senior in service shall discharge all the duties of collector, and also the duties of disbursing agent; and of two or more deputies appointed on the same day, the one residing nearest the residence of the collector when the vacancy occurred shall discharge the said duties until another collector is appointed.

When it appears to the Secretary of the Treasury that the interest of the Government so requires, he may, by his order, direct the said duties to be performed by such other one of the said deputies as he may designate.

For the official acts and defaults of the deputy upon whom said duties are devolved remedy shall be had on the official bond of the collector, as in other cases; and for the official acts and defaults of such deputy as acting disbursing agent, remedy shall be had on the official bond of the collector as disbursing agent.

Collector's bond liable for deputy acting.

And any bond or security taken from a deputy by a collector, pursuant to section twelve of 'An act to amend existing customs and internal-revenue laws, and for other purposes,' approved February eight, eighteen hundred and seventy-five, shall be available to his legal representatives and sureties to indemnify them for loss or damage accruing from any act or omission of duty by the deputy so continuing or succeeding to the duties of such collector.

(See preceding section. § 3148.)

Suspension of Collector Francis Widmer on charges of fraud by supervisor. Deputy performing duties of collector entitled to compensation. (*United States v. Farden*, 99 U. S., 10, affirming, 13 Ct. Clms., 347; 25 Int. Rev. Rec., 55.)

Commissioner's power to suspend collectors. (§ 3163a.)

Death, resignation, or removal of collector; accounts. (§ 3219, p. 103.)

Deputy collector, when entitled to collector's salary.

SEC. 3150. Any deputy collector who has performed or may perform, under authority of law, the duties of any collector in consequence of a vacancy in the office of said collector, shall be entitled to receive the salary and commissions allowed by law to such collector, or the allowance in lieu of said salary and commissions allowed by the Secretary of the Treasury to such collector, and the Secretary of the Treasury may make to such deputy collector such allowance in lieu of salary and commissions as he might lawfully

make to such collector. And such deputy shall not be debarred from receiving such salary and commissions, or allowances in lieu thereof, by reason of the holding of another Federal office by said collector during the time for which such deputy acts as collector. But all payments to such deputy collector shall be upon duly audited vouchers.

SEC. 3151, *relative to inspectors of tobacco and cigars, repealed by act of August 4, 1886.* (24 Stat., 218.)

Internal-revenue agents.

SEC. 3152, *as amended by section 2, act of March 1, 1879* (20 Stat., 327); *act of July 7, 1884.* (23 Stat., 172). The Commissioner of Internal Revenue may, whenever in his judgment the necessities of the service so require, employ competent agents, not exceeding at any time *twenty* in number, to be paid such compensation as he may deem proper, not exceeding in the aggregate any appropriation made for that purpose; and he may, at his discretion, assign any such agent to duty under the direction of any officer of internal revenue, or to such other special duty as he may deem necessary; and no general or special agent or inspector, by whatever designation he may be known, of the Treasury Department, in connection with the internal revenue, * * * except as provided for in this title, shall be appointed, commissioned, employed, or continued in office.

The agents whose employment is authorized by this section shall be known and designated as internal-revenue agents, and they shall have all the powers of entry and examination conferred upon any officer of internal revenue, by sections thirty-one hundred and seventy-seven, thirty-two hundred and seventy-seven, thirty-two hundred and eighty-six, and thirty-three hundred and eighteen of the Revised Statutes; and all the provisions of said sections, including those imposing fines, forfeitures, penalties, or other punishments for the enforcement thereof, are hereby made applicable to the action of internal-revenue agents, in the same manner as if such agents were specially named in each of said sections.

Secs. 3177, 3277, 3286, 3318.

Secs. 3167, 3168, 3169, 3171.

And all the provisions of sections thirty-one hundred and sixty-seven, thirty-one hundred and sixty-eight, thirty-one hundred and sixty-nine, and thirty-one hundred and seventy-one of the Revised Statutes shall apply to internal-revenue agents as fully as to internal-revenue officers.

The legislative, executive, and judicial appropriation act, approved July 7, 1884 (23 Stat., 172), provided that there shall not be employed exceeding twenty agents, in lieu of the number then authorized by law.

Before this act the number authorized was thirty-five.

Ten additional internal-revenue agents authorized.

[SEC. 3152a.] *Section 3, act of June 13, 1898* (30 Stat., 450). * * *

And the Commissioner of Internal Revenue is authorized to employ ten agents, to be known and designated as internal-revenue agents, in addition to the number now authorized in section thirty-one hundred and fifty-two of the Revised Statutes as amended, and the existing provisions of law in all other respects shall apply to the duties, compensation, and expenses of such agents.

Twenty additional clerks and agents authorized.

SEC. 47. *Act of June 13, 1889.* (30 Stat., 450.) That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and

regulations for carrying into effect the provisions relating to the manufacture and sale of mixed flour, being section thirty-five to section forty-nine, both inclusive, of this Act, and the said Commissioner of Internal Revenue, by and with the approval of the Secretary of the Treasury, for the purpose of carrying said last-mentioned provisions of this Act into effect, is hereby authorized to employ such additional clerks and agents as may be necessary for that purpose, not to exceed twenty in number.

[Extract from legislative, executive, and judicial appropriation act approved March 3, 1885. (23 Stat., 404.)]

* * * *Provided further*, That the compensation of the chief of the internal-revenue agents shall not exceed ten dollars per day, and of the other agents not exceeding seven dollars per day each; and for per diem in lieu of subsistence, while traveling on duty, said agents shall receive at a rate to be fixed by the Secretary of the Treasury, not exceeding three dollars per day. * * *

Compensation

Nothing in section 4, act of August 5, 1882 (22 Stat., 255), shall be construed to prevent the Commissioner of Internal Revenue from detailing one revenue agent for duty in his office. (Appendix, p. 401.)

SEC. 3153, as amended by act August 15, 1876 (19 Stat., 152). There shall be appointed by the Secretary of the Treasury such number of internal revenue store-keepers as may be necessary, who shall each receive such compensation, not exceeding four dollars a day, to be paid monthly by the United States, as may be determined by the Commissioner of Internal Revenue. No store-keeper shall be engaged in any other business while in the service of the United States, without the written permission of the Commissioner of Internal Revenue. Every store-keeper shall take an oath faithfully to perform the duties of his office, and shall give a bond, to be approved by the Commissioner of Internal Revenue, for the faithful discharge of his duties, in such form and for such amount as the Commissioner may prescribe.

Storekeepers and their salaries.

Bond.

Storekeeper's bond. Form 50 revised.

Department Circular No. 26, February 20, 1893, division of appointments. Appointment of storekeepers, gaugers, and storekeepers and gangers in the Internal-Revenue Service. (39 Int. Rev. Rec., 69.)

[Extract from legislative, executive, and judicial appropriation act approved August 15, 1876. (19 Stat., 152.)]

Hereafter no store-keeper shall receive a greater compensation than four dollars per day; and said gaugers and store-keepers respectively shall only receive compensation when rendering actual service.

Compensation limited.

Henry B. McNeil v. The United States. (35 Int. Rev. Rec., 15; 23 Ct. Clms., 413.)

[SEC. 3153a.] *Extract from legislative, executive, and judicial appropriation act, August 15, 1876 (19 Stat., 152).* That the Secretary of the Treasury may, upon the recommendation of the Commissioner of Internal Revenue, impose the duties of storekeeper and gauger upon one officer, where the

Office of "store-keeper and gauger."

amount of spirits produced at the distillery to which such officer may be assigned, is not sufficient in the judgment of the Commissioner to warrant the employment of two officers to perform the separate duties of storekeeper and gauger. The Secretary of the Treasury may issue a commission to such officer as storekeeper and gauger, but the compensation for his services as storekeeper and gauger shall be that of storekeeper only. And the said officer shall before entering upon the discharge of such duties give a bond in the penal sum of not less than five thousand dollars for the faithful performance of the combined duties of storekeeper and gauger.

Compensation.

Bond.

Storekeeper and gauger's bond. Form 50½ revised.

[SEC. 3153b.] *Extract from section 2 of the legislative, executive, and judicial appropriation act, approved June 21, 1879 (21 Stat., 23).* Hereafter storekeepers at distilleries that mash less than sixty bushels of grain per day shall be allowed not exceeding fifty dollars per month. But when one person acts as storekeeper and gauger, his salary shall not exceed four dollars per day for the time actually employed.

Compensation at small distilleries.

Storekeepers are not assigned to distilleries of this capacity, but storekeepers and gaugers.

[SEC. 3153c.] *Extract from legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1885, approved July 7, 1884 (23 Stat., 172).* * * * Hereafter storekeepers, or storekeepers and gaugers, who are assigned to distilleries whose registered capacity is twenty bushels or less, shall receive two dollars per day for their services.

Same provision in appropriation act for fiscal year 1886. (23 Stat., 404; Supp. R. S., Vol. 1, p. 484.)

Storekeeper and gauger, assignment of.

[SEC. 3153d.] *Section 64, act August 28, 1894. (28 Stat., 509.)* That the officer holding the combined office of storekeeper and gauger, under the provisions of the legislative, executive, and judicial appropriation act, approved August fifteenth, eighteen hundred and seventy-six (Nineteenth Statutes, page one hundred and fifty-two), may be assigned by the Commissioner of Internal Revenue to perform the separate duties of a storekeeper at any distillery, or at any general or special bonded warehouse, or to perform any of the duties of a gauger under the internal-revenue laws. And the said officer, before entering upon the discharge of such separate duties; shall give a bond to be approved by the Commissioner of Internal Revenue for the faithful discharge of his duties in such form and for such amount as the Commissioner may prescribe.

Assignments of storekeepers and gaugers must be made by the Commissioner of Internal Revenue upon the recommendation of the collector. They may be transferred for service from one distillery to another upon the recommendation of the collector of the district. The one assignment to the separate duties of a gauger continues in force so long as he is continuously employed as such. (Vol. I Treas. Dec. (1899), No. 20695.)

Assignment and transfer of storekeepers.

SEC. 3154. One or more storekeepers shall be assigned by the Commissioner of Internal Revenue to every bonded or distillery warehouse established by law; and any store-

keeper may be transferred * * * by the Commissioner of Internal Revenue, from one warehouse to another. Act Aug. 15, 1876.

In the original section power was given to supervisors of internal revenue to transfer storekeepers, but those offices were abolished by the act of August 15, 1876. (19 Stat., 143.)

[SEC. 3154a.] *Section 63, act of August 28, 1894. (28 Stat., 509.)* Compensation.
That storekeepers, and storekeepers and gaugers, when transferred from one distillery to another, either in the same district or in different districts, shall receive compensation not exceeding four dollars per day during the time necessarily occupied in traveling from one distillery to the other, together with actual and necessary traveling expenses.

This section will not authorize the payment to storekeepers and storekeepers and gaugers of per diem and expenses except when traveling "*from one distillery to another*," as therein specified. (Vol. I, Comp. Dec. (1895), 242.)

SEC. 3155. In case of the absence of any internal-revenue storekeeper by reason of sickness or other cause, the collector having control of the warehouse may designate a person to have temporary charge thereof, who shall, during such absence, perform the duties and receive the pay of the storekeeper for the time he may be so employed, and shall for any violation of the law be subject to the same punishment as storekeepers. Temporary storekeeper.

Storekeepers' duties. (§§ 3267, 3271, 3273, 3274, 3287, 3295, 3301, 3302.)

Penalties prescribed in case of storekeepers. (§ 3300, p. 186.)

Concerning designations during temporary absence of storekeepers or storekeepers and gaugers. (Circular letter, October 29, 1895; 41 Int. Rev. Rec., 445.)

SEC. 3156. The Secretary of the Treasury shall appoint in every collection district where they may be necessary, one or more internal-revenue gaugers, who shall each take an oath faithfully to perform his duties, and shall give bond, with one or more sureties, satisfactory to the Commissioner of Internal Revenue, for the faithful discharge of the duties assigned to him by law or regulations; and the penal sum of said bond shall not be less than five thousand dollars, and said bond shall be renewed or strengthened as the Commissioner of Internal Revenue may require. The duties of every such gauger shall be performed under the supervision and direction of the collector of the district to which he may be assigned, or of the collector in charge of exports at any port of entry to which he may be assigned. Gaugers.

Gauger's bond. Form 39 revised.

Compromise of gauger's bond. (Decision of Secretary Sherman, adverse; 23 Int. Rev. Rec. (1877), 139.)

New bonds can not be accepted from gaugers so as to release old bondsmen from responsibility. (30 Int. Rev. Rec. (1884), 197.)

The right of action on the bond prescribed by section 3156 is reserved to the Government, notwithstanding an indictment, conviction, and sentence under section 3169, unless there is an averment of satisfaction of the latter. (United States v. Cullerton, 8 Biss., 166; 24 Int. Rev. Rec., 68.)

For instructions as to the duties of gaugers, see Regulations, series 7, No. 11, revised, Gaugers' Manual (1900); series 7, No. 11, revised supplement No. 1, Gaugers' Weighing Manual, 1895; and series 7, No. 7, revised, with its supplements.

The offices of gauger, storekeeper, and storekeeper gauger, where the compensation does not exceed \$3 per day, or shall not exceed in the aggregate \$500 per annum, are not subject to competitive examination or registration, but persons appointed to said offices are subject to an examination to be prescribed by the Secretary of the Treasury, and to be taken before appointment, when possible. (Circular No. 538, revised; Vol. 2, Treas. Dec., No. 21397.)

[SEC. 3156a.] *Section 65, act August 28, 1894 (28 Stat., 509).* That internal-revenue gaugers may be assigned to duty at distilleries, rectifying houses, or wherever gauging is required to be done, and transferred from one place of duty to another, by the Commissioner of Internal Revenue, in like manner as storekeepers and storekeepers and gaugers are now assigned and transferred.

Gaugers' returns. (§ 3291, p. 174.)

Penalties prescribed in case of gaugers. (§§ 3290, 3292, p. 174.)

Gauging instruments to be prescribed by the Commissioner.

(§ 3249, p. 144.)

Gaugers' fees. SEC. 3157. Gaugers shall be entitled to receive such fees, to be determined by the quantity gauged, as may be prescribed by the Commissioner of Internal Revenue; and said fees, together with their actual and necessary traveling expenses, shall be verified by their oaths, and shall be paid by the United States monthly.

[SEC. 3157a.] *Extract from the legislative, executive, and judicial appropriation act, approved June 19, 1878, (20 Stat., 178).* * * * And hereafter the compensation of gaugers shall not exceed five dollars per day while actually employed.

[SEC. 3157b.] *Extract from legislative, executive, and judicial appropriation act of August 15, 1876, (19 Stat., 143).* * * * gaugers * * * shall only receive compensation when rendering actual service.

Gaugers for special duty.

[SEC. 3157c.] *Act of July 7, 1898 (30 Stat., 656).* *Extract from the act making appropriation to supply deficiencies in the appropriations for the fiscal year ending June 30, 1898, and for prior years, and for other purposes.* That gaugers employed in gauging fruit brandy,

and gaugers specially detailed for special duty under the direction of the Commissioner of Internal Revenue, may be paid, at the discretion of the Commissioner of

Internal Revenue, either by fees to be determined by the quantity gauged, or by a daily compensation not to exceed five dollars per diem while actually employed; and in calculating the daily compensation of all gaugers paid by fees, the quantity gauged for which fees are paid may be determined by dividing the aggregate gallons of spirits gauged by the number of days on which the gauger was actually employed during the month.

Compensation.

Daily compensation, how calculated.

Gaugers' fees, Circular No. 205. Regulations, series 7, No. 5, revised. Gauger's Manual (1900).

False claims. (United States v. Bittinger, 21 Int. Rev. Rec., 342.)

Compensation of internal-revenue gaugers. Former decisions modified as follows:

A gauger may be employed while traveling from one distillery to another under orders or instructions issued by competent authority, although he may not on days while so traveling actually gauge any spirits.

Reimbursement for traveling expenses is not in the nature of compensation, and the traveling expenses of internal-revenue

gaugers are not subject to the restriction upon their compensation contained in section 3157, R. S. (Decision by Comptroller Tracewell (1898), IV Comp. Dec., 712.)

Section 3169, R. S. (second paragraph), makes it an offense for a United States gauger to receive any compensation except as by law prescribed for the performance of his duty.

Rectifiers are entitled to have gaugers do their work promptly and accurately without any other pay than the pay received from the Government. Violation of law on the part of a United States gauger in receiving money from rectifiers for gauging spirits. (*U. S. v. Brunjes*, 36 Int. Rev. Rec., 47.)

A gauger's pay being fixed by a general regulation, his case comes within the prohibition of section 1765, and he can not receive pay for another service rendered at the same time. (*Hedrick v. United States*, 16 Ct. Clms., 88.)

For instructions in regard to rendering accounts for fees and expenses, see Regulations, series 7, No. 2, revised, p. 109, and circular letter of March 8, 1900.

[Extract from legislative, executive, and judicial appropriation act for 1885. Act of July 7, 1884 (23 Stat., 172).]

And no collector in any district shall recommend, nor shall there be appointed or commissioned, more deputy collectors, storekeepers, storekeepers and gaugers, gaugers, inspectors, or other officers, or allowed to remain in commission more of any of said officers, at any one time, than fifteen per cent in excess of the number engaged in performing duty at the time, and indispensably necessary for the performance of said duty.

Officers in commission not to exceed 15 per cent in excess of the number employed.

See also appropriation act for fiscal year ending June 30, 1886. (23 Stat., 404; Supp. R. S., Vol. 1, p. 484; Commissioner's Report, 1886, p. cxii.)

Circular No. 310, limiting the number of relatives permitted to hold position in the Internal-Revenue Service in each district. (33 Int. Rev. Rec., 101.)

Provided, That the number of deputy collectors and clerks employed in the collection of internal revenue shall not be increased, nor shall the salaries of said officers and employees be increased beyond the salaries paid during the last fiscal year. (Extract from the legislative, executive, and judicial appropriation act for 1899, act March 15, 1893, 30 Stat., 293.)

A similar proviso has been in previous appropriation acts since the act of July 7, 1884, but was not inserted in the appropriation act for 1900, act of February 24, 1899 (30 Stat., 846).

SEC. 3158. Every internal-revenue officer, whose payment, charges, salary, or compensation are composed, wholly or in part, of fees, commissions, allowances, or rewards, from whatever source derived, shall be required to render to the Commissioner of Internal Revenue, under regulations to be approved by the Secretary of the Treasury, a statement under oath setting forth the entire amount of such fees, commissions, emoluments, or rewards of whatever nature, or from whatever source received, during the time for which said statement is rendered; and any false statement knowingly and willfully rendered under the requirements of this section, or regulations established in accordance therewith, shall be deemed willful perjury, and punished in the manner provided by law for the crime of perjury. And any neglect or omission to render such statement when required shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, in the discretion of the court.

Statement of fees, etc.

Penalty. Act Feb. 18, 1875.

[SECS. 3159 and 3160] *repealed by legislative, executive, and judicial appropriation act of August 15, 1876 (19 Stat., 143).* Office of supervisor abolished.

Officers in charge of exportations and drawbacks.

SEC. 3161. In any port of the United States where there is more than one collector of internal revenue, the Secretary of the Treasury may designate one of them to have charge of all matters relating to the exportation of articles subject to tax under the internal-revenue laws; and at any port where he may deem it necessary, there shall be appointed by him an officer to superintend all matters of exportation and drawback, under the direction of the collector. The compensation of the officers last named shall be prescribed by the Secretary of the Treasury, but shall not exceed, in any case, an annual rate of two thousand dollars, excepting at New York, where such compensation shall be at the annual rate of three thousand dollars. At any port where there is no superintendent of exports, all the duties and services required of such officers shall be performed by the collector of internal revenue designated to have charge of exportation. All the books, papers, and documents in the bureau of drawbacks in the respective ports, relating to the drawback of taxes paid under the internal-revenue law, shall be delivered to the collector of internal revenue in charge of exportation.

Collectors and superintendents of exports may administer oaths.

SEC. 3162. Every collector of internal revenue and every superintendent of exports and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal-revenue laws.

See section 3165 in regard to general authority of collector to administer oaths.

Duties of collectors and internal-revenue agents.

SEC. 3163, *as amended by section 2, act of March 1, 1879 (20 Stat., 327).* Every collector within his collection district and every internal-revenue agent shall see that all laws and regulations relating to the collection of internal taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. And it shall be the duty of every collector and of every internal-revenue agent to report to the Commissioner in writing any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal-revenue officer or agent of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same.

Commissioner may transfer certain officers.

The Commissioner may also transfer any inspector, gauger, storekeeper, or storekeeper and gauger, from one distillery, or other place of duty, or from one collection district, to another.

Duty of collector to collect taxes. (§ 3183, p. 88.)

Injunction will not lie against an executive officer to prevent his performance of acts directed by law. (Opinion of Solicitor of Treasury in the case of Sidenburg & Co., 27 Int. Rev. Rec., 47.)

Proper course to be pursued by a disbursing officer of the United States who is enjoined by a State court from paying money. (Opinion of the Attorney-General, 25 Int. Rev. Rec., 53; 16 Op. Atty. Gen., 257.)

Courts will not interfere by injunction with the exercise by

the executive officers of duties requiring judgment or discretion. (*Gaines v. Thompson*, 7 Wall., 347; *Litchfield v. Register and Receiver*, 9 Wall., 575.)

As to injunctions against collectors. (See under § 3224, p. 108; also *Haffin v. Mason*, 15 Wall., 671; 17 Int. Rev. Rec., 118; 16 Op. Atty. Gen., 257; 25 Int. Rev. Rec., 53.)

Trespass will not lie against a collector for seizure unless the act was tortious or unauthorized. (*Averill v. Smith*, 17 Wall., 82; 17 Int. Rev. Rec., 171.)

An officer or agent of the United States engaged in the performance of a duty arising under the laws and authority of the United States is not liable to a criminal prosecution in the courts of a State for acts done by him in his official capacity. (*In re Waite*, 81 Fed. Rep., 359.)

Execution not to issue against officers in case of probable cause. (§ 989, p. 371, Appendix.)

[SEC. 3163a.] *Extract from legislative, executive, and judicial appropriation act, approved August 15, 1876 (19 Stat., 152).* * * * The powers of transfer, and of suspension, of officers conferred upon supervisors by section thirty-one hundred and sixty-three of the Revised Statutes, are hereby vested in the Commissioner of Internal Revenue; and all other powers conferred, and duties imposed, by said section upon supervisors, are hereby conferred and imposed upon collectors of internal revenue within their respective districts. In case of the supervision [suspension] of a collector, under the power hereby conferred, the Commissioner of Internal Revenue shall, as soon thereafter as practicable, report the case to the President through the Secretary of the Treasury for such action as he may deem proper. * * *

Certain powers under § 3163 vested in Commissioner.

Certain powers, etc., under § 3163, conferred upon collectors.

Commissioner to report suspension of collector.

The powers and duties specified in section 3163, Revised Statutes, as that section was at the time of the above enactment of August 15, 1876, are as follows:

"SEC. 3163. Every supervisor, under the direction of the Commissioner, shall see that all laws and regulations relating to the collection of internal taxes, are faithfully executed and complied with; and shall aid in the prevention, detection, and punishment of any frauds in relation thereto, and examine into the efficiency and conduct of all officers of internal revenue; and for such purposes he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel a compliance with such summons in the same manner as collectors may do. He shall report in writing to the Commissioner of Internal Revenue any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal-revenue officer of which he may obtain knowledge, with a statement of all the facts in each case, and any evidence sustaining the same. He may, by notice in writing, suspend from duty any inspector, gauger, or storekeeper, and he may suspend any collector for fraud, or gross neglect of duty, or abuse of power. In case of the suspension of any inspector, gauger, or storekeeper, he shall immediately notify the collector of the proper district and the Commissioner of Internal Revenue, and within three days thereafter report his action and his reasons therefor, in writing, to the Commissioner. In case of the suspension of any collector, he shall immediately report his action to the Commissioner, with his reasons therefor, in writing, and the Commissioner, in all cases of suspension, shall thereupon take such action as he may deem proper. Every supervisor may also transfer any inspector, gauger, or storekeeper from one distillery, or other place of duty, or from one collection district, to another."

The authority to issue summons, etc., conferred upon collectors under this act is additional to the power conferred by section 3173, R. S., p. 80.

The extent and limitation of the authority of supervisors to compel the production of books and papers under section 3163 were discussed in the decision rendered by Judge Treat, in the United States district court, district of Missouri, in the case wherein Frederick Becker refused to obey the order of Supervisor Meyer to produce certain books and papers, and wherein an attachment was asked by the supervisor to compel obedience to his subpoena. (21 Int. Rev. Rec., 243.)

Law not unconstitutional in giving these officers the right to examine books, etc. (*Stanwood v. Green*, 11 Int. Rev. Rec., 134.)

The supervisor for the Georgia and Florida district summoned merchants in Atlanta to appear before him with their books for examination touching violations of the revenue laws supposed to have been committed by these parties without the supervisory district. The parties were served but failed to appear, and application was made by the supervisor to the United States district judge for an attachment.

Held, That the authority of the supervisor to compel the parties to testify and produce their books, etc., in such cases is constitutional and valid.

The authority given to the supervisor to enter without warrant and examine the premises of parties is valid as a civil proceeding, and not in conflict with the fourth amendment to the Constitution, nor is his authority to compel parties to attend and produce books and testify, in conflict with the fifth amendment to the Constitution. (*In re Meadow & Brothers* (1869), 10 Int. Rev. Rec., 74. See also *Perry v. Newcome*, 10 Int. Rev. Rec., 20; *Stanwood v. Fordyce*, 13 *id.*, 77.)

Duty of collectors to report violations of law to district attorney.

SEC. 3164. It shall be the duty of every collector of internal revenue to report within ten days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, and which may come to his knowledge from time to time, stating the provisions of the law believed to be violated, and on which a reliance may be had for condemnation or conviction; and if any collector shall in any case fail to report to the proper district attorney as prescribed in this section, his right to any compensation, benefit, or allowance in such case shall be forfeited to the United States, and the same may, in the discretion of the Secretary of the Treasury, be awarded to such persons as may make complaint and prosecute the same to judgment or conviction.

SEC. 838. It shall be the duty of every district attorney to whom any collector of customs, or of internal revenue, shall report, according to law, any case in which any fine, penalty, or forfeiture has been incurred in the district of such attorney for the violation of any law of the United States relating to the revenue, to cause the proper proceedings to be commenced and prosecuted without delay, for the fines, penalties, and forfeitures in such case provided, unless, upon inquiry and examination, he shall decide that such proceedings can not properly be sustained, or that the ends of public justice do not require that such proceedings should be instituted; in which case he shall report the facts in customs cases to the Secretary of the Treasury, and in internal-revenue cases to the Commissioner of Internal Revenue for their direction.

Under the provisions of section 3460, R. S., p. 346, when any property (except real estate) seized by the collector for violation of internal-revenue laws does not exceed \$500 in value it should be proceeded against by the collector, instead of being reported to the district attorney, unless a bond for costs is given as provided by said section. (See also Regulations Series 7, No. 12, revised, pp. 21, 22.)

Course to be pursued by revenue agents and collectors in cases of technical violations of law, compromises, etc. (27 Int. Rev. Rec., 397.)

Cases to be carefully examined before proceedings are instituted. (Regulations Series 7, No. 12, p. 22.)

Prosecution not commenced before indictment. (Virginia v. Paul, 148 U. S., 107.)

Official communications privileged from disclosure on the ground of public policy. (Gardner v. Anderson, 22 Int. Rev. Rec., 41.)

SEC. 3165, as amended by section 2, act of March 1, 1879 (20 Stat., 329). Every collector, deputy collector, and inspector is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

Revenue officers who may administer oaths and take evidence.

See section 3162, p. 72.

SEC. 183. Any officer or clerk of any of the Departments lawfully detailed to investigate frauds, or attempts to defraud, on the Government, or any irregularity or misconduct of any officer or agent of the United States, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation.

SEC. 3166. Any officer of internal revenue may be specially authorized by the Commissioner of Internal Revenue to seize any property which may by law be subject to seizure, and for that purpose such officer shall have all the power conferred by law upon collectors; and such special authority shall be limited in respect of time, place, and kind and class of property, as the Commissioner may specify: *Provided*, That no collector shall be detailed or authorized to discharge any duty imposed by law upon any other collector.

Revenue officers authorized to make seizures.

Seizure may be made by any unofficial person, but at the peril of responsibility in damages in case the seizure is not adopted by the Government and the property is not condemned. (13 Op. Atty. Gen., 253.)

See section 3453 in regard to seizures, p. 343.

SEC. 3167, as amended by section 34, act of August 28, 1894. (28 Stat., 509.) That it shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employé of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law, any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at

Revenue officers disclosing operations of manufacturers, etc.; penalty.

the discretion of the court; and if the offender be an officer or employé of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

This section applies to revenue agents. (§ 3152, p. 66.)

Furnishing statistical information to private persons. (34 Int. Rev. Rec., 117.)

Circular letter of August 18, 1897; information from official records. (43 Int. Rev. Rec., 318.)

Officers not to be interested in certain manufactures; penalty.

Act Feb. 27, 1877 (19 Stat., 20), correcting verbal error.

SEC. 3168. Any internal-revenue officer who is or shall become interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled *spirits*, shall be dismissed from office; and every officer who becomes so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than five hundred dollars nor more than five thousand dollars.

See section 3152, p. 66.

See sections 1887 and 1789, pp. 384, 385, as to prohibitions against officers in respect to certain kinds of business.

See section 244, p. 405, as to certain business forbidden to clerks in Treasury Department.

Circular No. 456, May 5, 1896; Government officer not authorized to fill in or date blank requests of distillers for regauge.

Circular No. 456 should be construed as prohibiting internal revenue officers from acting as agents for distillers in any capacity. (42 Int. Rev. Rec., 354.)

Officers of internal revenue guilty of extortion, receiving unlawful fees, and of other offenses.

SEC. 3169. Every officer or agent appointed and acting under the authority of any revenue law of the United States—

First. Who is guilty of any extortion or willful oppression under color of law; or,

Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or,

Third. Who willfully neglects to perform any of the duties enjoined on him by law; or,

Fourth. Who conspires or colludes with any other person to defraud the United States; or,

Fifth. Who makes opportunity for any person to defraud the United States; or,

Sixth. Who does or omits to do any act with intent to enable any other person to defraud the United States; or,

Seventh. Who negligently or designedly permits any violation of the law by any other person; or,

Eighth. Who makes or signs any false entry in any book, or makes or signs any false certificate or return, in any case where he is by law or regulation required to make any entry, certificate, or return; or,

Ninth. Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to his next superior officer and to the Commissioner of Internal Revenue; or,

Tenth. Who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do, shall be dismissed from office, and shall be held to be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One-half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court.

Section 3152 makes this section applicable to internal-revenue agents.

Who are officers? (*United States v. Hartwell*, 6 Wall., 385; *United States v. Germaine*, 99 U. S., 508.)

In *United States v. Monat* (124 U. S., 303, 307), the court, following the decision in the case of *United States v. Germaine* (99 U. S., 508), said that "under the Constitution of the United States all its officers were appointed by the President, by and with the consent of the Senate, or by a court of law or the head of a Department" (members of the Cabinet), and that unless so appointed they are not, "strictly speaking," officers of the United States.

Congress may use the word "officer" in a more popular sense and the courts in construing an act of Congress must ascertain its meaning. (*United States v. Hendee*, 124 U. S., 309.)

Extortion is defined as "the unlawful taking by an officer, under color of his office, of any money or thing of value that is not due to him or more than his due, or before it is due." (4 *Blacks. Com.*, 141. See also *United States v. Deaver*, 14 *Fed. Rep.*, 595.)

Knowingly demanding greater sums than are authorized by law. (*United States v. Highleyman*, 22 *Int. Rev. Rec.*, 138.)

United States v. Peter O. Brunjes. Violation of law on the part of a United States gauger in receiving money from a rectifier for gauging spirits. (36 *Int. Rev. Rec.*, 47.)

Officer of the United States guilty of extortion. (§ 5481, R. S.)

Extortion by internal-revenue informers. (§ 5484, p. 389.)

Conspiracy. (§ 5440, p. 389.)

Bribery. (§§ 5451, 5501, p. 388-389.)

Embezzlement. (§§ 5488, 5490, 5491, 5492, 5497, p. 383.)

Penalty for failure to make reports. (§ 1780, Appendix, p. 384.)

Limitation of suits against officers. (See "Statute of Limitations," Appendix, p. 370.)

An officer of internal revenue, named as such in the indictment, can not be jointly indicted, for a conspiracy, to defraud the revenue, with private persons. (*United States v. McDonald*, 3 *Dill.*, 543.)

Two offenses related to each other joined in the same indictment; a separate sentence rendered on the verdict of each count illegal. (*Ex parte John A. Joyce*, 23 *Int. Rev. Rec.*, 297.)

[SEC. 3169a.] Sec. 1, act of March 1, 1879 (20 *Stat.*, 327). That any collector of internal revenue, or any deputy collector or other employee of, or person acting for, such collector, who shall issue any stamp or stamps indicating the payment of any internal revenue tax, before payment in full therefor has been made to the officer or person issuing the

Collector, etc.,
issuing stamps
before payment.

Penalty.

same, shall be deemed guilty of a misdemeanor, and shall be fined for each stamp thus issued an amount equal to the face value thereof, in addition to the liability of the collector on his official bond on account of such stamp; and such collector, deputy collector, or employee shall be dismissed from office.

Issuing stamps for distilled spirits to any other person than as provided by law. (§ 3316, p. 196.)

Receipt in lieu of stamp prohibited. (§ 3183, p. .88)

Application of laws imposing punishment on internal-revenue officers to certain other classes of persons.

[SEC. 3169b.] *Section 23, act of February 8, 1875 (18 Stat., 307).* That all acts and parts of acts imposing fines, penalties, or other punishment for offenses committed by an internal-revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall be, and are hereby, applied to all persons whomsoever, employed, appointed, or acting under the authority of any internal-revenue or customs law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money.

District attorney or marshal accepting or demanding anything for compromise of violation of internal-revenue laws.

SEC. 3170. Every district attorney or marshal who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money or other property of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of any provision of the internal-revenue laws, except as expressly authorized by law to do so, shall be held to be guilty of a misdemeanor, and shall be fined in double the sum or value of the money or property received or demanded, and be imprisoned for not less than one nor more than ten years.

Accepting illegal fees, etc. [§ 18, act of May 28, 1896 (29 Stat., 140.)]

Officers suffering injuries may maintain suit for damages.

SEC. 3171, as amended by section 2, act of March 1, 1879 (20 Stat., 327). If any officer appointed under and by virtue of any act to provide internal revenue, or any person acting under or by authority of any such officer, shall receive any injury to his person or property, *in the discharge of his duty*, under any law of the United States for the collection of taxes, he shall be entitled to maintain suit for damage therefor, in the circuit court of the United States, in the district wherein the party doing the injury may reside or shall be found.

Penalties for obstructing officers (§§ 3177, p. 84; 3276, p. 165; 5398, p. 387).

For rescuing prisoners or property (§§ 5446, p. 387; 3177, p. 84; 5401, p. 387).

Conspiracy to prevent persons from accepting office (§ 5518, p. 389).

Penalty for falsely assuming to be an officer (§ 5448, p. 388, and act of April 18, 1884).

CHAPTER TWO.

OF ASSESSMENTS AND COLLECTIONS.

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| <p>Sec.</p> <p>3172. Canvass of districts for objects of taxation.</p> <p>3173 (amended). Returns of persons liable to tax.</p> <p>3174. Summons.</p> <p>3175. Failure to obey summons; proceedings.</p> <p>3176 (amended). When collector may enter premises and make returns. One hundred per cent penalty; 50 per cent penalty.</p> <p>3177. Officers may enter premises where taxable articles are kept. Obstructing officers; penalty.</p> <p>3178. (Obsolete.)</p> <p>3179. Making false returns, or failing to obey summons; penalty.</p> <p>3180. Taxable property owned by non-residents.</p> <p>3181. Lists or returns.</p> <p>3182. Commissioner to make assessments; correction of incomplete or imperfect lists within fifteen months.</p> <p>3183 (amended). Duty of collectors to collect taxes; not to issue receipts in lieu of stamps.</p> <p>[3183a] (act of August 28, 1894). Receipts to be given upon payment of tax; separate receipts to be given in certain cases.</p> <p>3184. Notice and demand of taxes.</p> <p>3185. Returns; when tax payable; 5 per cent penalty and interest.</p> <p>3186 (amended). Lien for taxes.</p> <p>3187. Distraint.</p> <p>3188. Mode of levying distraint.</p> <p>3189. Delinquents must exhibit evidence relating to property distrained.</p> <p>3190. Proceedings on distraint.</p> <p>3191. When property sold under distraint is subject to tax, and tax not paid.</p> <p>3192. When property sold under distraint may be purchased for United States, etc.</p> <p>3193. Property distrained to be restored on payment before sale.</p> <p>3194. Effect of certificate of sale.</p> <p>3195. When property distrained is not divisible.</p> <p>3196. When real estate may be sold to satisfy taxes.</p> <p>3197 (amended). Proceedings for seizure and sale of real estate.</p> | <p>Sec.</p> <p>[3197a.] Regulating the manner in which personal or real property may be sold under orders and decrees of sale.</p> <p>3198. Certificate of purchase; deed.</p> <p>3199. Collector's deed <i>prima facie</i> evidence, etc.</p> <p>3200. Collector may seize lands of delinquent in any district of same State.</p> <p>3201. Redemption prior to sale.</p> <p>3202. Redemption after sale.</p> <p>3203 (amended). Record of sales.</p> <p>3204. Redemptions to be entered on record.</p> <p>3205. Successive seizures may be made, when.</p> <p>3206. Fees and charges in seizure cases.</p> <p>3207. Proceedings in chancery to subject real estate to payment of tax.</p> <p>3208 (amended). Commissioner to have charge of real estate acquired under internal-revenue laws.</p> <p>3209. When list to be sent to district where the party taxed resides or has property.</p> <p>3210. Collections to be paid into Treasury daily.</p> <p>3211. Depositories.</p> <p>3212. Collectors' monthly statement; accounts.</p> <p>3213. Suits for fines, penalties, forfeitures, and taxes.</p> <p>3214. Suits for taxes, etc., not to be brought without sanction of Commissioner.</p> <p>3215. Regulations for government of district attorneys, marshals, etc.</p> <p>3216. Moneys recovered to be paid to collectors.</p> <p>3217. Delinquent collectors; proceedings by distraint.</p> <p>3218. Collectors to be charged with what; due diligence.</p> <p>3219. Death, etc., of collector; uncollected balances.</p> <p>3220. Remission and refunding of taxes, penalties, etc.</p> <p>3221 (amended). Taxes on spirits accidentally destroyed.</p> <p>3222. Retrospective effect of preceding section.</p> <p>3223 (amended). When tax on lost spirits is indemnified by insurance.</p> |
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Sec.	Sec.
3224. Suits to restrain assessment or collection of taxes prohibited.	3228. Claims for refunding; limitation.
3225. Suits to recover taxes collected under second assessment; burden of proof as to fraud, etc.	3229. Compromises.
3226. Suits for recovery of taxes wrongfully collected.	3230. Discontinuances of certain prosecutions.
3227. Limitation of suits for recovery of taxes wrongfully collected.	3231. Continuances of cases
	31. Act June 13, 1898. Former laws made applicable.

Canvass of districts for objects of taxation.

SEC. 3172, as amended by section 34, act of August 28, 1894. (28 Stat., 509.) Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay *any internal revenue tax*, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

For methods employed in ascertaining names of persons liable to pay special taxes as rectifiers, wholesale liquor dealers, retail liquor dealers, tobacco manufacturers, and cigar manufacturers, see 22 Int. Rev. Rec., 109; 24 *Ibid.*, 241; 26 *Ibid.*, 193; 29 *Ibid.*, 409.

For those employed as to retail dealers in oleomargarine, see office form 263.

As to reports by deputies, see Regulations, series 7, No. 1, revised, and as to the use of microscopes by deputies, see Regulations, series 7, No. 9, revised.

SEC. 3173, as amended by section 34, act of August 28, 1894. (28 Stat., 509.) That it shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or *other tax* imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the

Annual and other returns, when to be made. See Sec. 3185, R. S., p. 89.

When returns must be made by deputy collector or collector.

person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

Proceedings in case of absence.

Cases of neglect or of making false returns.

Summons to produce books and testify.

Returns of taxes assessable under internal-revenue laws to be made in duplicate. (Circular No. 140, Int. Rev. No. 548; Vol. 2, Treas. Dec. (1899), No. 21801.)

See section 3163a, conferring upon collectors the authority formerly conferred upon supervisors to summon persons to appear and testify under oath and to produce books and papers.

The returns (Form 11, revised) of special taxpayers must be made under oath or affirmation, whether covering the whole year or a fractional part of the year. (26 Int. Rev. Rec., 89; *Ibid.*, 69.)

It is held that if a person liable to tax discloses in due time the particulars as to the articles, etc., liable to tax, or the occupation liable to special tax as set forth in the first proviso of section 3173, he is not liable to 50 per cent penalty for refusal or neglect to make return, even if the deputy collector to whom the disclosure is made fails to make the list or return. (See § 3176, R. S., p. 83.)

This section clothes collectors of internal revenue with supervisory power over and authorizes them to investigate all accounts, lists, or returns made or required to be made to them by any and all classes of persons liable to pay taxes upon any

property, trade, or business. (*United States v. Hodson*, 14 Int. Rev. Rec., 100.)

The collector is not authorized to require the production of the books of a corporation in which the taxpayer is a shareholder, such books in the meaning of that provision not being books relating to the trade or business of the shareholder. (*Lee, assessor, v. Chadwick*, 11 Int. Rev. Rec., 133; 1 Lowell, 439.)

The taxpayer charged with making false returns must appear before the proper collector by whom summoned for examination with his books. (See decision by Judge Blatchford, 9 Int. Rev. Rec., 1.)

After the right of assessment has been lost a collector has no legal authority to require the production of a person's private books and papers for the purpose of ascertaining his liability to tax. (In the matter of *O. H. P. Archer*, 24 Int. Rev. Rec., 110; 9 Ben., 427.)

It is no defense that the answers of the person summoned would tend to incriminate him, as no disclosures or admissions so made can be used against him in criminal proceedings. (§ 860 R. S., p. 364. *In re John T. Phillips*, 10 Int. Rev. Rec., 107.)

The Constitution provides that no man can be compelled to be a witness against himself in a criminal case. (Article 5 of amendments.) This does not apply to a person summoned under this section. The examination of books under this section is not an infringement of the fourth amendment to the Constitution, providing against unreasonable searches. (*In re Mark Strouse*, 11 Int. Rev. Rec., 182; 1 Sawyer, 605.)

The decision of the United States Supreme Court in the case of *Boyd v. The United States* (116 U. S., 617; 32 Int. Rev. Rec., 62) was, in effect, that a compulsory production of a man's private papers, to be used as evidence against him in a proceeding to forfeit his property for alleged fraud against the revenue laws, is an "unreasonable search and seizure" within the meaning of the fourth amendment of the Constitution.

That decision relates to criminal proceedings, and does not apply to proceedings to recover taxes.

See act of June 22, 1874, relative to production of books, papers, etc., in suits other than criminal, page 363, Appendix.

Summons by assessor to produce books and attachment by court for refusal. (*Lippman's case*, 3 Benedict, 95; 9 Int. Rev. Rec., 1; *Landram v. United States*, 16 Ct. Clms., 74, 85.)

Meaning of the words "objects charged with internal-revenue tax." (*Wells Fargo & Co. v. Shook*, 8 Blatch., 254.)

On this section see Regulations, Series 7, No. 1 Revised.

Summons, form
and manner of
service of.

SEC. 3174. Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

Failure to obey
summons, pro-
ceedings on.

SEC. 3175. Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collectors may apply to the judge of the district court or to a commissioner of the circuit court of the United States for the district within which the person so

summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

Penalty for failure to obey summons. (§ 3179, p. 85.)

The judge may issue a rule to show cause why an attachment should not issue. The application of the collector in these cases is a proceeding in a civil cause, and may be amended. (Lee, assessor, v. Chadwick, 11 Int. Rev. Rec., 133.)

In the matter of Oliver H. P. Archer, Judge Blatchford denied a collector's application for a writ of attachment, as the Commissioner was barred by the fifteen months' limitation in section 3182 from assessing. *Held also* that there was nothing in section 3163 in connection with the act of August 15, 1876 (3163a), to vary this view. (24 Int. Rev. Rec., 110; 9 Ben., 427.)

SEC. 3176, as amended by section 34, act of August 23, 1894 (28 Stat., 509). When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person, or corporation, company, or association and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held *prima facie* good and sufficient for all legal purposes.

Proceedings where no return is made.

One hundred per cent penalty.

Fifty per cent penalty.

Penalties when collectible.

Ruling in regard to the 50 per cent penalty in special tax cases. (25 Int. Rev. Rec., 237.)

As to the term "false," meaning willfully false (German Savings Bank v. Archbold (15 Blatch., 398, 24 Int. Rev. Rec., 414); Supreme Court Decision (28 Int. Rev. Rec., 175; 104 U. S. (14 Otto),

708). The court did not hold that the return must be willfully false, but intimated that such would have been its decision if it had been necessary to pass upon the question in the case decided.

No 50 per cent penalty can attach to an assignee for default in rendering a return. (Letter of the Secretary of the Treasury to Commissioner of Internal Revenue, June 19, 1880, in the matter of Cabbage, Hazlehurst & Co., bankers.)

As to 100 per cent penalty. (11 Op. Atty. Gen., 280.)

In case of neglect or refusal to make returns, in case of false or fraudulent ones, and in case of returns in which there is any omission or understatement, collectors will proceed as provided in section 3176. (Letter of Commissioner Miller in the matter of Canadian Bank Bills, 34 Int. Rev. Rec., 93.)

The act of Congress which imposes an addition of 100 per cent to the tax as a penalty for the "return of a false or fraudulent list or valuation" is constitutional. (Doll v. Evans, 15 Int. Rev. Rec., 143.)

The 50 per cent addition is a penalty, not a tax. (17 Op. Atty. Gen., 433.)

Concerning assessable penalties of 50 per cent and 100 per cent. (Circular No. 543, August 12, 1899; vol. 2, Treas. Dec., 1899, No. 21517 and No. 21536.)

Reporting delinquent special-tax payers for assessment. (Circular No. 410, December 5, 1893.)

Reporting delinquent special-tax payers for assessment of taxes and assessable penalties and revising Circular No. 470, November 20, 1896. (Circular No. 539, June 27, 1899; vol. 1, Treas. Dec., 1899, No. 21316.)

Officers may enter premises wheretaxable articles are kept.

SEC. 3177. Any collector, deputy collector, or inspector may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary, for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while so open, in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector, or inspector, in the execution of any power and authority vested in him by law, or shall forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court.

Obstructing officers. Rescuing property. Penalty.

This section is made applicable to revenue agents by section 3152 as amended (p. 66). There are now no internal-revenue officers known as inspectors.

Rescuing seized property. (§ 5446, p. 387.)

Seized property irrepleviable. (§ 934, p. 372.)

Rescuing prisoners. (§ 5401, p. 387.)

Obstructing process or assaulting officer. (§ 5398, p. 387.)

Distiller or person in his employ obstructing officer. (§ 3276, p. 165.) Wholesale liquor dealer or rectifier hindering revenue officer from examining book. (§ 3318, p. 197.)

Search warrants. (§ 3462, p. 348.)

The right conferred by section 3177 is limited to the purpose described. (United States v. Mann, 95 U. S. (5 Otto), 580; 24 Int. Rev. Rec., 20.)

Officers must have free and peaceable egress as well as ingress to the places where they are authorized to make examination, and the proprietors have no right to eject them. (*United States v. Mosely*, 15 Int. Rev. Rec., 8.)

The authority of such officers to make examinations, can not be delegated to their clerks. National banks not exempt from examination. (*United States v. Rhawn*, 22 Int. Rev. Rec., 235.)

Indictments under this section. (*United States v. Ford*, 34 Fed. Rep., 26.)

SEC. 3178 *requires returns to show whether amounts are valued in coin or currency.*

Although the provision is not expressly repealed, it has been obsolete since the resumption of specie payments, January 1, 1879.

SEC. 3179. Whenever any person delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made, or, being duly summoned to appear to testify, or to appear and produce such books as aforesaid, neglects to appear or to produce said books, he shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

Making false return or neglecting to obey summons; penalty.

United States v. McGinnie and Mountjoy (1 Abb. U. S., 120; 3 Int. Rev. Rec., 159.)

SEC. 3180. Whenever there are in any district any articles not owned or possessed by or under the care or control of any person within such district, and liable to be taxed, and of which no list has been transmitted to the collector, as required by law, the collector or one of his deputies shall enter the premises where such articles are situated and shall take such view thereof as may be necessary, and make lists of the same, according to the form prescribed. Said lists, being subscribed by such collector or deputy, shall be taken as sufficient lists of such articles for all purposes.

Taxable property owned by nonresidents.

SEC. 3181. The lists or returns aforesaid shall, where not otherwise especially provided for, be taken with reference to the day fixed for that purpose by this Title as aforesaid; and where duties accrue at other and different times, the list shall be taken with reference to the time when said taxes become due, and shall be denominated annual, monthly, and special lists or returns.

Lists, when taken and how denominated.

There is now no annual list. There has been no list denominated annual since the act abolishing assessors and requiring special taxes to be paid by stamps. Act of December 24, 1872 (17 Stat., 401).

Act Feb. 18, 1875.

SEC. 3182. The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this Title, or accruing under any former internal-revenue act, where such taxes had not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any list which has been or shall be delivered

Commissioner to make assessments. Correction of incomplete or imperfect lists within fifteen months.

to any collector, is imperfect or incomplete in consequence of the omission of the name of any person liable to tax, or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may, at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid, there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid; and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings herein authorized and directed.

Reassessment within fifteen months. (*Dandele v. Smith*, 18 Wall., 642; *Barker v. White*, 19 Int. Rev. Rec., 117; 11 Blatch., 445; *Daniels v. Tarbox*, 9 Blatch., 176; *Bergdoll v. Pollock*, 95 U. S., 337.)

The authority to make assessments of the taxes due is limited to the fifteen months next succeeding the delivery to the collector of the list upon which the assessment might have been made, but from which it was omitted, except in cases where it is otherwise provided.

Assessors abolished. Act December 24, 1872 (17 Stat., 401).

April list, 1873, was the last list made by assessors. Special No. 128.

Commissioner to make assessments of taxes and penalties (§ 3176, p. 83); of taxes on property sold under distraint (§ 3191, p. 91); against dealers in leaf tobacco for deficiency (§ 3244, p. 121); on spirits removed without deposit in warehouse (§ 3253, p. 150); on spirits in case of excessive loss (§ 3293 as amended, p. 174); on distillers for deficiency, etc. (§ 3309, p. 190); for export stamps issued (§ 3314, p. 194); on tobacco, snuff, and cigars removed without being stamped (§ 3371, p. 246); of stamp taxes within two years (§ 3437, p. 298); on fruit brandy removed without compliance with law (act March 3, 1877, p. 210); on oleomargarine removed without being stamped (act August 2, 1886, p. 210); on playing cards removed without being stamped (§ 47, act of August 28, 1894, p. 332); on distiller of spirits in case of failure concerning spirits removed for deposit in a general bonded warehouse (§ 58, act of August 28, 1894, p. 183); on filled cheese removed without being stamped (§ 10, act June 6, 1896, p. 279); additional tax on fermented liquors (§ 1, act June 13, 1898, p. 227); additional tax on manufactured tobacco, snuff, and cigars (§ 3, act of June 13, 1898, p. 242); tax on mixed flour removed without payment of tax (§ 41, act of June 13, 1898, p. 283). See also section 31, act of June 13, 1898, making all laws in relation to the assessment of taxes not theretofore specifically repealed applicable to said act, p. 112.

As to when an assessment is conclusive. (*United States v. Black*, 11 Blatch., 538; 19 Int. Rev. Rec., 116. *United States v. Hodson et. al.*, 14 Int. Rev. Rec., 100.)

Assessment prima facie evidence. (*United States v. Rindskopf*, 105 U. S., 418; 28 Int. Rev. Rec., 141. *Clinkenbeard v. United States*, 21 Wall., 65; 21 Int. Rev. Rec., 37.)

Legal effect of assessments as evidence. Letter of Commissioner Raum reviewing the decisions on the subject. (23 Int. Rev. Rec., 5.)

Obligation to pay tax does not depend upon an assessment. (*Dollar Savings Bank v. United States*, 19 Wall., 227; 19 Int. Rev. Rec., 89; 22 *Id.*, 310. *King v. United States*, 99 U. S., 229. *United States v. Tilden*, 9 Benedict, 368; 24 Int. Rev. Rec., 99. *United States v. Little Miami Railroad*, 26 *Ibid.*, 101; 1 Fed. Rep., 700.)

An assessment no bar to a suit for an amount due over and above the amount assessed and paid. (*United States v. Hazard*, 22 Int. Rev. Rec., 309; *United States v. Tilden*, 24 *Ibid.*, 99.)

Protection afforded a collector in collecting an assessment. (*Erskine v. Hohnbach*, 14 Wall., 613; 17 Int. Rev. Rec., 19. *Haffin v. Mason*, 15 Wall., 671; 17 Int. Rev. Rec., 118. *Harding v. Woodcock*, 137 U. S., 43.)

The papers upon which an assessment is made are privileged, and courts have no authority to require their production. (16 Op. Atty. Gen., 24; 24 Int. Rev. Rec., 178.)

A distillery was sold under distraint by a collector on an assessment made against the distiller, on spirits fraudulently removed from the distillery. The assessment, though made after the owner of the distillery, who had consented in writing that the premises should be used as a distillery and that the taxes and penalty should be a first lien on the premises (see § 3262, p. 157), had sold it to another party, was held to be valid and could not be attacked collaterally, and the sale under distraint was held to be valid. (*United States circuit court, northern district Illinois, Freysinger case; Milan Distilling Company v. Tillson, collector*, 26 Int. Rev. Rec., 5.)

A policy of insurance upon a mill and a distillery provided that all liens should be disclosed in the application on penalty of forfeiture, and that any change in the possession by virtue of legal process should have a like effect. Held that an illegal assessment by the Commissioner of Internal Revenue was not a lien within the policy, and that a seizure thereunder, being illegal, was not contemplated by the policy. (*Runkle v. Citizens' Insurance Company, United States circuit court, southern district of Ohio*; 28 Int. Rev. Rec., 74.)

Receipts of the collector on Form 23 $\frac{1}{2}$ for the alphabetical list showing taxes due are competent evidence. (*United States v. Nancy Hunt, executrix, and others*, 105 U. S. (15 Otto), 183; 28 Int. Rev. Rec., 134.)

Allegations in a bill that an assessment is irregular and in violation of law and void do not constitute any ground for an injunction to restrain the collection of the assessment. (*Alkan and Swenger v. Bean, collector, and Buckley, deputy collector*, 23 Int. Rev. Rec., 351.)

A bill in equity will not lie to enjoin a collector of internal revenue from collecting a tax assessed by the Commissioner, although the tax is alleged in the bill to have been illegally assessed. Resort may be had to the instructions of the Internal Revenue Office in regard to the preparation of assessment lists to show the meaning of the abbreviations in those lists. (*Snyder, appellant, v. Marks*, 109 U. S., 189; 29 Int. Rev. Rec., 403. See also decisions under § 3224, p. 108.)

Instructions to collectors relative to the preparation of assessment lists are given in Regulations, series 7, No. 1, revised, and on the first page of the lists Form 23.

Under this section the Commissioner, in making a reassessment upon distilled spirits for the purpose of rectifying an error, is not confined to a period of fifteen months last past. The statute took effect March 3, changing the rate of duty upon spirituous liquors from 70 cents to 90 cents. The assessment was made for a period previous to and including March 3 at 70 cents. Held that, though the statute was in force the whole of March 3, so that the rate that day should have been 90 cents, the taxpayer could not on that account dispute validity of the assessment. Two assessments covering partially the same period will be presumed to be for different liquors till the contrary is shown.

An action upon a bond conditioned upon the payment of an assessment will not fail because the complaint does not set forth

the whole of the assessment. (*United States v. O'Neil and others*, 30 Int. Rev. Rec., 127; 19 Fed. Rep., 567.)

For instructions relative to assessment of taxes on distilled spirits overdue under provisions of section 3293, Revised Statutes, see notes under that section, and on assessments generally, see Regulations, series 7, No. 1, revised.

Circular letter (No. 4), March 27, 1874, to collectors, directing the course to be taken to recover taxes due, but unassessable (without waiver) because of the fifteen months' limitation.

Duty of collectors to collect taxes.

SEC. 3183, as amended by section 3, act of March 1, 1879 (20 Stat., 327). It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by him, *excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax.*

Not to issue receipts in lieu of stamps.

Receipts to be given upon payment of tax.

[SEC. 3183a.] Section 37, act of August 23, 1894 (28 Stat., 509). That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this Act, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor, to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

Separate receipts to be given in certain cases.

Collector issuing stamps before payment. (§ 3169a, p. 77.)

Collections to be paid into Treasury daily. (§ 3210, p. 98.)

Case of Pinkney Rollins, collector, taking sight drafts. (23 Int. Rev. Rec., 6.)

As to rendering accounts. (§ 3212, p. 99, and § 3622, p. 378.)

Notice and demand of taxes.

SEC. 3184. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the

amount of taxes, and interest at the rate of one per centum a month.

Interest for full time will be collected on an assessment the abatement for which has been applied for and rejected; that is, time consumed in considering the claim must be included. But in the case of the 5 per cent penalty such time may be thrown out, provided ten days do not elapse before claim is made or before payment after rejection. (Circular No. 192, 24 Int. Rev. Rec., 409; Regulations, series 7, No. 1, revised, 1893, p. 55.)

Neither under the internal-revenue act of June 30, 1864, as amended, nor under the internal-revenue act of July 14, 1870, did neglect to pay the tax deductible from corporate interest and dividend subject the corporation in fault to the penalty of 5 per cent per month imposed by said acts in certain cases of default. (*Erskine v. Milwaukee Railroad Company*, 94 U. S., 619; 24 Int. Rev. Rec., 90. *Elliot v. Railroad Company*, 99 U. S. (9 Otto), 572; 25 Int. Rev. Rec., 56.)

Sections 3184 and 3185 strictly construed. (United States v. Allen, 14 Fed. Rep., 263.)

Notice necessary before taxpayer can be charged with penalty and interest. (United States v. Bristow, 20 Fed. Rep., 278.)

Directions to enforce 5 per cent penalty and interest. (Aug. 15, 1871; 14 Int. Rev. Rec., 58.)

Collector has no authority to remit the penalty and interest. (Regulations, series 7, No. 1, revised; 9 Int. Rev. Rec., 18E.)

SEC. 3185. All returns required to be made monthly by any person liable to tax shall be made on or before the tenth day of each month, and the tax assessed or due thereon shall be returned by the Commissioner of Internal Revenue to the collector on or before the last day of each month. All returns for which no provision is otherwise made shall be made on or before the tenth day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made. When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: *Provided*, That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner of Internal revenue. It shall then be the duty of the collector, in case of the non-payment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with five per centum added thereto, and interest at the rate of one per centum per month, as aforesaid, in the manner prescribed by law; and if said tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law.

Returns, when to be made, and when tax payable.

Five per cent penalty and interest at the rate of 1 per cent per month.

Instructions to collectors in regard to notices to taxpayers; Circular No. 311 (33 Int. Rev. Rec., 109).

No power to remit penalty and interest (9 Int. Rev. Rec., 188; 14 *ibid.*, 58).

If spirits are exported without payment of tax after it has been assessed, the distiller is not relieved from the 5 per cent penalty which had accrued. (*Clay & Co. v. Swope*, collector, 38 Fed. Rep., 396; 35 Int. Rev. Rec., 136.)

Lien for taxes.

SEC. 3186, as amended by section 3, act of March 1, 1879 (20 Stat., 327). If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment-list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person.

Because of the special provision for a lien for the tax upon spirits (§ 3251, p. 146) there is rarely occasion for calling in the provisions of section 3186 in the case of taxes on spirits.

Lien in case of deficiency when spirits are withdrawn for exportation. (See 16 Op. Atty. Gen., 634; 25 Int. Rev. Rec., 342.)

In order to support and enforce a statutory lien for taxes, all the prerequisites of the law granting the lien must be strictly complied with. (United States v. Allen, 14 Fed. Rep., 263.)

A lien for taxes does not stand upon the footing of an ordinary incumbrance, and is not displaced by a sale under a preexisting judgment or decree, unless otherwise directed by statute. It attaches to the *res* without regard to individual ownership, and when it is enforced by sale pursuant to the statute prescribing the mode of assessing and collecting them, the purchaser takes a valid and unimpeachable title. (Osterberg v. Union Trust Company, 93 U. S. (3 Otto), 424; 23 Int. Rev. Rec., 146.)

The Pacific Railroad Company appeared not to have paid all taxes due on dividends. It was succeeded by the Atlantic and Pacific Railroad. Demand was made by the collector of the first district of Missouri on the Atlantic and Pacific Railroad. Held that the demand did not create a lien in favor of the United States. Demand must be for specific amount. All the steps required by law must be pursued strictly. (Decision by Judge Miller, 23 Int. Rev. Rec., 384.)

A lien for taxes created by the act of July 13, 1866, section 3186, R. S., takes effect only upon property belonging to the delinquent at the time the demand for the payment of the tax is made by the Government. The lien is not created by the law itself, but requires an assessment, a notice that the tax is due, and a specific demand upon the individual taxpayer. There is a distinction between the liability of a taxpayer under the common law and the creation and enforcement of a lien. (Decision of Circuit Judge McCrary, United States v. Pacific Railroad et al., 26 Int. Rev. Rec., 100; 1 McCrary, 1; 1 Fed. Rep., 97; Brown v. Goodwin, 75 N. Y., 409.)

See on this section United States v. Snyder (149 U. S., 210; 39 Int. Rev. Rec., 189).

Taxes collectible by distraint.

SEC. 3187. If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, and evidences of debt, of the person delinquent as aforesaid: *Provided*, That there shall be exempt from distraint and sale, if belonging to the head of a family, the school-books and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market-value of said sheep shall not exceed fifty dollars; the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred

Property exempt from distraint.

dollars; and the books, tools, or implements, of a trade or profession, to an amount not greater than one hundred dollars shall also be exempt; and the officer making the distrain shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

Collectors in accepting sureties on internal-revenue bonds will be careful to see that no portion of the property described on the surety's affidavit is exempt from distrain under this section or under the laws of the State in which the surety resides.

State exemption laws do not apply to distrain under this section. (To Collector Wheeler, December 12, 1884.)

State exemption laws inapplicable to debts due the United States. (United States v. Howell, 9 Fed. Rep., 674.)

SEC. 3188. In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.

Mode of levying distrain.

SEC. 3189. All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distrain, or the property or rights of property liable to distrain for the tax due as aforesaid.

Delinquents must exhibit evidence relating to property distrained.

SEC. 3190. When distrain is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distrain, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distrain is made, if a newspaper is published in said county, or to be publicly posted at the post-office, if there be one within five miles, nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distrain. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days.

Proceedings on distrain.

SEC. 3191. When property subject to tax, but upon which the tax has not been paid, is seized upon distrain and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof

When property sold under distrain is subject to tax, and tax not paid.

to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon.

As taxes are now paid by stamps, assessments under the last clause are rarely necessary. (See § 3458, p. 345.)

When property sold under distraint may be purchased for United States, etc.

SEC. 3192. When any property advertised for sale under distraint, as aforesaid, is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding the said tax. All property so purchased may be sold by the collector, under such regulations as may be prescribed by the Commissioner of Internal Revenue. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of sale, shall pay into the Treasury the surplus, if any there be, after defraying all lawful charges and fees.

Property distrained to be restored on payment before sale.

SEC. 3193. In any case of distraint for the payment of the taxes aforesaid, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in case of nonpayment as aforesaid, the said officer shall proceed to sell the said goods, chattels, or effects at public auction, and shall retain from the proceeds of such sale the amount demandable for the use of the United States, and a commission of five per centum thereon for his own use, with the fees and charges for distraint and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same.

Allowances for salary and office expenses of collectors are in lieu of salary and commissions heretofore provided by law. (§ 3148, p. 62.)

Effect of certificate of sale.

SEC. 3194. In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

When property distrained is not divisible.

SEC. 3195. When any property liable to distraint for taxes is not divisible, so as to enable the collector by a sale of

part thereof to raise the whole amount of the tax, with all costs, charges, and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs, and charges, shall be paid to the person legally entitled to receive the same; or, if he can not be found, or refuses to receive the same, shall be deposited in the Treasury of the United States, to be there held for his use until he makes application therefor to the Secretary of the Treasury, who, upon such application and satisfactory proofs in support thereof, shall, by warrant on the Treasury, cause the same to be paid to the applicant.

SEC. 3196. When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate.

When real estate may be sold to satisfy taxes.

SEC. 3197, *as amended by section 3, act of March 1, 1879 (20 Stat., 327)*. The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection-district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post-office nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of ten dollars. When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses, charges, and fees aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price aforesaid. If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States; otherwise the same shall be declared to be sold to the highest bidder.

Proceedings for seizure and sale of real estate for taxes.

Purchases for United States.

And in case the same shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and, at the proper time, as hereafter provided, shall execute a deed therefor, after its preparation and the indorsement of approval as to its form by the United States district attorney for the district in which the property is situate, and shall without delay cause the same to be duly recorded in the proper registry of deeds, and immediately

thereafter shall transmit such deed to the Commissioner of Internal Revenue.

Adjournment of
sale.

And said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner.

Deeds.

And it is hereby provided, That all certificates of purchase, and deeds of property purchased by the United States under the internal-revenue laws, on sales for taxes, or under executions issued from United States courts, which now are, or hereafter may be, found in the office of any collector, United States marshal, or United States district attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue.

District attorney's
fee.

And it is hereby further provided, That for the preparation and approval by the United States district attorney of each deed as above required, a fee¹ of five dollars shall be allowed to that officer, to be paid by the United States, and which he shall account for in his emolument returns.

(1) *Seizure of real property.*—Unless required by statute, a levy or seizure of real property for the purpose of sale to satisfy a debt or tax may be made without going upon the premises, by making a memorandum upon the warrant of the description of the premises for the purpose of a levy and sale.

(2) *Sale of real property*—A deputy collector of internal revenue, to whom a warrant was directed for the collection of a delinquent tax due from A, levied upon 330 acres of land belonging to A, when said tax became due, by entering upon said warrant a correct description of the premises, by metes and bounds, but at the same time incorrectly stated therein that they were in the occupation of B, who lived over 2 miles distant from the premises, and afterwards offered the premises which said B lived on for sale upon the erroneous assumption that they were the premises of A, upon which he levied as above, and there being no bidders, declared the same purchased for the United States, for the amount of the tax, interest thereon, and charges. *Held* that there was no valid sale of the premises, and that the United States took nothing by the subsequent conveyance to it from the collector. (*United States v. Hess*, 5 Sawyer, 533; 25 Int. Rev. Rec., 201, 240.)

If property is bid in for tax it extinguishes the debt, and suit can not be maintained on the bond. (*United States v. Triplett*, 22 Int. Rev. Rec., 207.)

Bill in equity by party not in possession to remove cloud from title to land purchased by United States not authorized unless State Statutes authorize it. (*Wilson v. United States*, 118 U. S., 86.)

It is a general rule that in the execution of a power to sell lands for nonpayment of taxes a strict compliance with all the material requirements of the statute authorizing the sale is required.

Regarding the seizure and sale of real estate for taxes. (Reg. Series 7, No. 12, Rev., p. 41; *United States v. Mackoy*, 2 Dill., 299; *Mansfield v. Excelsior Refining Co.*, 135 U. S., 326; 36 Int. Rev. Rec., 165.)

SEC. 3197a. An act to regulate the manner in which property shall be sold under orders and decrees of any United States courts.

Act March 3,
1893.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all real estate or any interest in land sold under any order

¹ As district attorneys are paid a salary (§§ 6, 7, act May 28, 1896, p. 375), this fee is not allowed.

or decree of any United States Court shall be sold at public sale at the Court-house of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises, as the court rendering such order or decree of sale may direct.

SEC. 2. That all personal property sold under any order or decree of any Court of the United States shall be sold as provided in the first section of this act, unless in the opinion of the court rendering such order or decree, it would be best to sell it in some other manner. Sale of personal property.

SEC. 3. That hereafter no sale of real estate under any order, judgment, or decree of any United States Court shall be had without previous publication of notices of such proposed sale being ordered and had once a week for at least four weeks prior to such sale in at least one newspaper printed, regularly issued and having a general circulation in the county and State where the real estate proposed to be sold is situated, if such there be. If said property shall be situated in more than one county or State, such notice shall be published in such of the counties where said property is situated, as the court may direct. Said notice shall, among other things, describe the real estate to be sold. The court may, in its discretion, direct the publication of the notice of sale herein provided for to be made in such other papers as may seem proper. Publication of notice of sale of real estate.

Approved, March 3, 1893.

SEC. 3198. Upon any sale of real estate, as provided in the preceding section, and the payment of the purchase money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate be not redeemed in the manner and within the time hereafter provided, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the State in which such real estate is situate upon the subject of sales of real estate under execution. Certificate of purchase. Deed.

SEC. 3199. The deed of sale given in pursuance of the preceding section shall be prima facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto. Collector's deed to be prima facie evidence, etc.

In case of a distillery, although consent is given that the Government has a prior lien, any interest of distiller is transferred to purchaser. (*Mansfield v. Excelsior Refining Company*, 36 Int. Rev. Rec., 165; 135 U. S., 326.)

Relative to deeds. (*Brown v. Goodwin*, 75 N. Y., 409; *Fox v. Stafford*, 90 N. C., 296; *Flemister v. Flemister*, 83 Ga., 79.)

SEC. 3200. Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell the lands of such person situated in any other collection district within the State in Collector may seize lands of delinquent in any district of same State.

which such officer resides; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district.

Redemption of
land prior to sale.

SEC. 3201. Any person whose estate may be proceeded against as aforesaid shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

Redemption of
land after sale.

SEC. 3202. The owners of any real estate sold as aforesaid, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof, upon payment to the purchaser, or, in case he can not be found in the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum

Record of sales.

SEC. 3203, *as amended by section 3, act of March 1, 1879 (20 Stat., 327)* It shall be the duty of every collector to keep a record of all sales of land made in his collection district, whether by himself or his deputies, or by another collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed, and all proceedings in making said sale, amount of fees and expenses, the name of the purchaser and the date of the deed; and said record shall be certified by the officer making the sale. And on or before the fifth day of each succeeding month he shall transmit a copy of such record of the preceding month to the Commissioner of Internal Revenue.

And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof. In case of the death or removal of the collector, or the expiration of his term of office from any other cause, said record shall be delivered to his successor in office; and a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated.

Record of sales, book No. 21.

Redemptions to
be entered on
record.

SEC. 3204. When any lands sold, as aforesaid, are redeemed as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of such redemption.

Successive
seizures may be
made, when.

SEC. 3205. Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distraint or seizure is made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell, in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SEC. 3206. The Commissioner of Internal Revenue shall by regulation determine the fees and charges to be allowed in all cases of distraint and other seizures; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary.

Fees and charges in seizure cases.

Regulations, series 7, No. 2, revised, p. 95.

SEC. 3207. In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a district or circuit court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the real estate sought to be subjected as aforesaid, shall be made parties to such proceedings, and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein, and finally determine the merits of all claims to and liens upon the real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree a sale of such real estate, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

Proceedings in chancery to subject real estate to payment of tax.

See section 563, subdivision fifth, p. 357.

Not necessary to file a lien according to State laws. (*United States v. Snyder* (1893), 149 U. S., 210; 39 Int. Rev. Rec., 189.)

Bill in equity under section 3207. (*Alkan v. Bean*, 8 Biss., 83; 23 Int. Rev. Rec., 351.)

Bill under section 3207 to subject real estate to payment of assessment on distilled spirits. (*United States v. Rindskopf*, 8 Biss., 507.)

Bill in equity to enforce lien on distillery. (*United States v. Mackoy*, 2 Dill., 229.)

SEC. 3208, as amended by section 3, act of March 1, 1879 (20 Stat., 327). The Commissioner of Internal Revenue shall have charge of all real estate which is now or shall become the property of the United States by judgment of forfeiture under the internal-revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, and of all trusts created for the use of the United States in payment of such debts due them; and, with the approval of the Secretary of the Treasury, may at public vendue, and upon not less than twenty days' notice, sell and dispose of all real estate owned or held by the United States as aforesaid; and until such sale the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may lease such real estate owned as aforesaid on such terms and for such period as they shall deem expedient.

Commissioner to have charge of real estate acquired under internal-revenue laws, etc.

And in cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of one per centum per month, to the United States, within two years from the date of the acquisition of such real estate, it shall be lawful for the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to release by deed, or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

Solicitor of the Treasury to have charge of real estate owned by United States in certain cases. (§ 3750.)

SEC. 3470. At every sale, on execution, at the suit of the United States, of lands or tenements of a debtor the United States may, by such agent as the Solicitor of the Treasury shall appoint, become the purchaser thereof; but in no case shall the agent bid in behalf of the United States a greater amount than that of the judgment for which such estate may be exposed to sale and the costs. Whenever such purchase is made, the marshal of the district in which the sale is held shall make all needful conveyances, assignments, or transfers to the United States.

Section 3470 does not apply to cases arising under the internal-revenue laws. (To United States Attorney Stripling, Oct. 8, 1898.)

Commissioner not authorized to take charge of lands acquired in satisfaction of judgments recovered on the official bonds of collectors of internal revenue. (16 Op. Atty. Gen., 143.)

Real estate purchased by the Government is not subject to State taxation after it has become the property of the United States. (Van Brocklin v. State of Tennessee, 117 U. S., 151.)

Regulations, series 7, No. 12, revised, p. 31; 37.

SEC. 3209. Whenever a collector has on any list duly returned to him the name of any person not within his collection district who is liable to tax, or of any person so liable who has, in the collection district in which he resides, no sufficient property subject to seizure or distraint, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his own collection district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him.

When list to be sent to district where the party taxed resides or has property.

SEC. 3210. The gross amount of all taxes and revenues received or collected by virtue of this title, or of any law hereafter enacted providing internal revenue, shall be paid, by the officers receiving or collecting the same, daily into the Treasury of the United States, under the instructions of the Secretary of the Treasury, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description; and a cer-

Collections to be paid into Treasury daily.

tificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer, assistant treasurer, designated depository, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue: *Provided*, That in districts where, from the distance of the officer, collector, or agent receiving or collecting such taxes and revenues from a proper Government depository, the Secretary of the Treasury may deem it proper, he may extend the time for making such payment, not exceeding, however, in any case a period of one month.

See section 3216, p. 101.

SEC. 3473. And all taxes and all other debts and demands than duties on imports, accruing or becoming due to the United States, shall be paid in gold and silver coin, Treasury notes, United States notes, or notes of national banks. * * *

SEC. 3474. No gold or silver other than coin of standard fineness of the United States shall be receivable in payment of dues to the United States, except as provided in section twenty-three hundred and sixty-six, title "Public Lands," and in section thirty-five hundred and sixty-seven, title "Coinage, Weights, and Measures."

SEC. 3505. Any gold coins of the United States, if reduced in weight by natural abrasion not more than one-half of one per centum below the standard weight prescribed by law, after a circulation of twenty years, as shown by the date of coinage, and at a ratable proportion for any period less than twenty years, shall be received at their nominal value by the United States Treasury and its officers, under such regulations as the Secretary of the Treasury may prescribe for the protection of the Government against fraudulent abrasion or other practices.

The standard silver dollar and silver certificates authorized by the act of February 28, 1878 (20 Stat., 25), are legal tender to any amount. Silver coins less than \$1 legal tender to amount of \$10, act June 9, 1879 (21 Stat., 7). Gold coins (§ 3511). Silver certificates for \$1, \$2, and \$5, act March 3, 1878 (24 Stat., 515).

For regulations on deposit of funds see series 7, No. 2, revised, p. 10.

A collector has no authority to receive in payment for stamps anything but money. *Miltenberger v. Cooke* (18 Wall., 421) decides that a collector in accepting a draft in payment of a tax acts at his own risk and does not bind the United States.

SEC. 3211. The Secretary of the Treasury is authorized to designate one or more depositories in each State, for the deposit and safe-keeping of the money collected by virtue of the internal-revenue laws; and the receipt of the proper officer of such depository to a collector for the money deposited by him shall be a sufficient voucher for such collector in the settlement of his accounts at the Treasury Department.

Depositories.

See section 5490, p. 382.

SEC. 3212. Every collector shall, at the expiration of each month after he commences his collections, transmit to the Commissioner of Internal Revenue a statement of the collections made by him within the month. And every collector shall complete the collection of all sums assigned to him for collection, and shall pay over the same into the Treasury, and shall render his accounts to the Treasury Department as often as he may be required.

Collectors' monthly statement; accounts.

See provisions of law in Appendix as to penalty for using public funds, failing to render accounts, etc.

See section 12, act July 31, 1894, Appendix, p. 379.

Accounts shall be examined by the Auditors as follows:

First. The Auditor for the Treasury Department shall receive and examine all accounts for salaries and incidental expenses of the office of the Secretary of the Treasury, and all bureaus and offices under his direction, all accounts relating to * * * internal revenue * * * (§ 7, act July 31, 1894; Sup. U. S. Rev. Stat., vol. 2, p. 213. "Dockery bill.")

Suits, etc., for
fines, penalties,
and forfeitures,
and for taxes.

SEC. 3213. It shall be the duty of the collectors, in their respective districts, subject to the provisions of this title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam* or otherwise, before any circuit or district court of the United States for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action.

See section 733, in Appendix, p. 359; section 3164, p. 74.

Suits for the recovery of taxes can be brought at any time, whether the taxes have been assessed or not, and whether they are assessable or not. (*Dollar Savings Bank v. United States*, 19 Wall., 227; 19 Int. Rev. Rec., 89; *King v. United States*, 99 U. S., 229; *United States v. Little Miami Co. and X. R. R. Co.*, 1 Fed. Rep., 700; *United States v. Tilden*, 9 Ben., 368.)

Suits commenced in a criminal case on filing an indictment; in a civil case on filing a declaration. (Vol. 1, Treas. Dec. (1898), No. 18941.)

Interest on taxes sued for runs from time taxes were due. (*United States v. Erie Railroad*, 106 U. S., 327; 29 Int. Rev. Rec., 58.)

In the case of taxes not assessed, where no special law applies, interest should be claimed from the commencement of the suit, if no previous demand has been made, or from date of demand, if demand can be proved.

Interest due under the general principle of law on the subject. (*Young v. Golbe*, 15 Wall., 562; *Bonnafon v. United States*, 14 Ct. Clms., 484.)

No action for debt will lie for a fine where the statute also provides for imprisonment. (*United States v. Morin*, 4 Biss., 93.)

Action of debt will lie for a penalty. (*United States v. Ebner*, 4 Biss., 117.)

Partner civilly liable for violation of law committed by co-partner. (*United States v. Thomasson*, 4 Biss., 99.)

Indictment—recovery of fines and penalties. (*United States v. Craft*, 43 Fed. Rep., 374; 36 Int. Rev. Rec., 360.)

A civil action upon a bond grows out of a contract. The penal sum named in a bond is not a penalty within the statute of limitations. (*Raymond v. United States*, 14 Blatchf., 451.)

Suits for taxes,
etc., not to be
brought without
sanction of Com-
missioner.

SEC. 3214. No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: *Provided*, That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit.

Section 969, Appendix, p. 366, has a similar provision to that contained in the above proviso.

For the recovery of taxes, see Regulations, series 7, No. 2, revised, p. 90; Regulations, series 7, No. 14, revised, p. 15.

Circular 319, relative to suits for taxes (34 Int. Rev. Rec., 333); circular 331, relative to suits for taxes, June 21, 1889 (35 Int. Rev. Rec., 197).

Right of the United States to sue for taxes. Set-offs growing out of independent claims can not be pleaded. (*United States v. Pacific R. R.*, 4 Dill., 66.)

A party claiming a credit which by reason of his laches was not presented to the accounting officers of the Treasury, and disallowed in whole or in part by them, can not set it up in an action brought by the United States against him for the recovery of a debt. (*Railroad Company v. United States*, 101 U. S., 543.)

SEC. 3215. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to establish such regulations, not inconsistent with law, for the observance of revenue officers, district attorneys, and marshals, respecting suits arising under the internal-revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws. Regulations as to suits, for government of officers.

The Solicitor of the Treasury is authorized to establish regulations for the observance of district attorneys and marshals in suits in which the United States is a party, other than those arising under the internal-revenue laws. (§§ 377 and 379.)

Duties of district attorneys as to prosecutions, etc. (Appendix, p. 373.)

"Regulations," decisions as to the force and effect thereof, see notes under section 321, p. 47.

Regulations, series 7, No. 12, revised.

SEC. 3216. All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties, shall be paid to collectors as internal taxes are required to be paid. Moneys recovered by suit to be paid to collectors.

The gross amount of all moneys received for the use of the United States is required to be paid by the officer or agent receiving the same into the Treasury at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. (§ 3617, p. 377, Appendix. See also § 3210 p. 98.)

See section 3621, as amended by act of May 28, 1896, p. 378.

Circular No. 203, instructions to United States marshals, April 15, 1879 (25 Int. Rev. Rec., 126.)

Instructions to clerks of courts as to disposition of moneys in the registry of the court. (Regulations, series 7, No. 12, revised, p. 17.)

Taxed costs payable to the collector. (*United States v. Wolters* (1892), 51 Fed. Rep., 896.)

Costs, as well as all other moneys collected in cases arising under the internal-revenue laws, are required by the law to be paid over by the court clerks to the collectors of the districts in which these cases arise. (Vol. 1, Treas. Dec. (1898), No. 19306.)

Expenses attending the sale of real estate (advertising) are to be deducted by collectors from the proceeds of sale. Only the net proceeds arising from such sales are to be deposited to the credit of the Treasurer of the United States. (Vol. 2, Treas. Dec. (1899), No. 21470.)

In all cases arising under the internal-revenue laws of the United States, where moneys are recovered and paid in for the United States, such moneys must be paid over to the collectors of internal revenue under the provisions of section 3216 of the Revised Statutes of the United States. The bills of costs in

such cases include the fees taxed by law for the marshals and United States attorneys, and, by virtue of section 983 of the Revised Statutes, the bill of costs in each case is a part of the judgment and will be paid to the collector as above indicated. (Attorney-General's instructions to United States marshals, attorneys, etc., January 1, 1899, p. 60.)

Dues from delinquent collectors to be collected by distraint and sale.

SEC. 3217. When any collector fails either to collect or to render his account, or to pay over in the manner or within the times provided by law, the (First) Comptroller of the Treasury shall, immediately after evidence of such delinquency, report the same to the Solicitor of the Treasury, who shall issue a warrant of distress against such delinquent collector, directed to the marshal of the district, expressing therein the amount with which the said collector is chargeable, and the sums, if any, which have been paid over by him, so far as the same are ascertainable. And the said marshal shall, himself, or by his deputy, immediately proceed to levy and collect the sum which may remain due, with five per centum thereon, and all the expenses and charges of collection, by distress and sale of the goods and chattels, or any personal effects of the delinquent collector, giving at least five days' notice of the time and place of sale, in the manner provided by law for advertising sales of personal property on execution in the State wherein such collector resides. And the bill of sale of the officer of any goods, chattels, or other personal property, distrained and sold as aforesaid, shall be conclusive evidence of title to the purchaser, and prima-facie evidence of the right of the officer to make such sale, and of the correctness of his proceedings in selling the same. And for want of goods and chattels, or other personal effects of such collector, sufficient to satisfy any warrant of distress, issued as aforesaid, the real estate of such collector, or so much thereof as may be necessary for satisfying the said warrant, after being advertised for at least three weeks next before the time of sale, in not less than three public places in the collection district, and in one newspaper printed in the county or district, if any there be, shall be sold at public auction by the marshal or his deputy. Upon such sale, the marshal shall make and deliver to the purchaser of the premises sold a deed of conveyance thereof, to be executed and acknowledged in the manner and form prescribed by the laws of the State in which said lands are situated, and said deed so made shall invest the purchaser with all the title and interest of the defendant named in said warrant, existing at the time of the seizure thereof. And all moneys that may remain of the proceeds of such sale of personal or real property, after satisfying the said warrant of distress, and paying the reasonable costs and charges of sale, shall be returned to the proprietor of the property sold as aforesaid.

See sections 3624 and 3625, in Appendix, p. 380, as to proceedings against officers failing to account for public moneys.

* * * The First Comptroller of the Treasury shall hereafter be known as Comptroller of the Treasury.

He shall perform the same duties and have the same powers and responsibilities (except as modified by this act) as those now performed by or appertaining to the First and Second Comptrollers of the Treasury and the Commissioner of Customs;

and all provisions of law not inconsistent with this act, in any way relating to them or either of them, shall hereafter be constrained and held as relating to the Comptroller of the Treasury. * * * (§ 4, act July 31, 1894; Supp. U. S. Rev. Stat., vol. 2, p. 213.)

SEC. 3218. Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; and he shall be credited with all payments into the Treasury made as provided by law, with all stamps returned by him uncancelled to the Treasury, and with the amount of taxes contained in the lists transmitted in the manner heretofore provided to other collectors, and by them receipted as aforesaid; also with the amount of the taxes of such persons as may have absconded, or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected, and with all uncollected taxes transferred by him or by his deputy acting as collector to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the facts to the (First) Comptroller of the Treasury, that due diligence was used by the collector. And each collector shall also be credited with the amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law.

Collectors to be charged with, what.

Due diligence.

See note under section 3217 as to change from First Comptroller to Comptroller.

Claims for credit. (§ 951, p. 391, Appendix.)

Certificate of due diligence condition precedent to allowance of credit. (*United States v. Kimball*, 101 U. S., 726.)

Question of due diligence and other questions relative to collectors' accounts considered. (*United States v. Barton Able*, 15 Int. Rev. Rec., 41, 50.)

Duplicate charges arising from the charging of a collector with assessed special taxes subsequently paid by stamps are adjusted by Auditor of the Treasury Department through claims on Form 66, and those arising from assessment of spirit taxes subsequently paid by stamps are adjusted through claims on Form 66A. But see Form 325, and column 10½, Form 23.

See section 3444, p. 339, articles in bonded warehouses.

SEC. 3219. In case of the death, resignation, or removal of any collector, all lists and accounts of taxes uncollected shall be transferred to his successor in office as soon as such successor is appointed and qualified, and it shall be the duty of such successor to collect the same.

Death, etc., of collector; uncollected balances.

SEC. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any

Remission and refunding of taxes, penalties, etc.

court, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty: *Provided*, That where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation.

See sec. 989, p. 371, as to certificate of probable cause.

Abatements and refunding may also be made to distillers in cases of unavoidable accident or misunderstanding (§ 3309a, p. 191).

A rejected claim may be prosecuted against the collector, and an allowed claim not paid may be sued for in the Court of Claims. Presentation to collector is equivalent to presentation to Commissioner. (*United States v. Real Estate Savings Bank*, 104 U. S. (14 Otto), 728; 28 Int. Rev. Rec., 87.)

It is a principle universally recognized and enforced in the courts of law that an action can not be maintained for the recovery back of money paid in the discharge of a tax illegally assessed, unless the payment was made under protest. But that principle has as uniformly been held by the Commissioner of Internal Revenue and other officers of the Department as altogether too technical and too exacting for application to the refund of taxes under this section, and from the beginning no proof of protest has ever been required. (*Real Estate Savings Bank v. United States* (1880), 16 Ct. Clms., 335; 27 Int. Rev. Rec., 154.)

No written notice of protest required. (*Wright v. Blakeslee*, 101 U. S., 174; 20 Int. Rev. Rec., 179.)

Government does not pay interest except under special contract or by virtue of special law providing it. (7 Op. Atty. Gen., 523; 9 *ibid.*, 57, 449.)

Where an illegal tax has been collected, the citizen who has paid it, and has been obliged to bring suit against the collector, is entitled to interest, in the event of recovery, from the time of the illegal exaction. (*Ersine v. Van Arsdale*, 15 Wall., 75.)

When a person accepts from the Government, without objection, payment of the sum illegally exacted, he gives up his right to sue for interest. (*Stewart v. Barnes*, 153 U. S., 456.)

Law relative to interest in suits against collectors reviewed. (*Commissioners of Sinking Fund of Louisville v. Buckner*, 48 Fed. Rep., 533.)

The Government is not liable for interest after final judgment. (*United States ex rel. v. John Sherman*, 98 U. S., 567; 25 Int. Rev. Rec., 198; *Schell v. Cochran*, 107 U. S., 626.)

United States does not pay interest on any claim which is due, because it is supposed to be always ready to pay. (*Stephani's Case*, 1 Lawrence Dec., 35; 26 Int. Rev. Rec., 313.)

It is a well-settled principle that interest is not allowed on claims against the United States unless the Government has stipulated to pay interest or it is given by express statutory provision. (*Angarica v. Bayard*, 127 U. S., 260; *United States v. New York*, 160 U. S., 619. See §§ 963, 966, Appendix, p. 368.)

A judgment against a collector may be paid to the claimant or to the collector. (34 Int. Rev. Rec., 39.)

If an appeal is taken from an assessment and decided against the appellant, and the tax is afterwards collected, it is not necessary to take a second appeal after payment before commencing suit to recover the tax. (*San Francisco Savings Society v. Cary*, 2 Sawy., 393; 17 Int. Rev. Rec., 109.)

Powers conferred upon the Commissioner relative to refund of taxes. (*Barnett et al. v. United States*, 16 Ct. Clms., 515.)

When the Commissioner of Internal Revenue has rendered a decision allowing a claim, and has issued his certificate accordingly, but payment is refused by the accounting officer, the claimant is entitled to recover in a suit in the Court of Claims. (*Kaufman v. United States*, 96 U. S., 567, affirming 11 Ct. Clms., 659; 24 Int. Rev. Rec., 135. See § 3426, p. 293.)

The words *wrongfully collected* do not give jurisdiction for refunding further than the word *illegally*. No equity powers conferred on the Commissioner of Internal Revenue. (*Ridgway Case*, 16 Op. Atty. Gen., 667.)

Commissioner authorized, not obliged, to refund. (13 Op. Atty. Gen., 439.)

Right of Commissioner to reconsider claim for refund and revoke allowance before payment. (*Ridgway v. United States*, 18 Ct. Clms., 707; 29 Int. Rev. Rec., 197.)

What constitutes a final award by the Commissioner. (*Stotesbury v. The United States*, 23 Ct. Clms., 285; 34 Int. Rev. Rec., 142; 146 U. S., 196.)

Right of Commissioner to refund, notwithstanding advice of Secretary to the contrary. (*Sybrandt v. United States*, 19 Ct. Clms., 46; 30 Int. Rev. Rec., 135.)

Reopening rejected claims for refunding. (14 Op. Atty. Gen., 275; 18 Int. Rev. Rec., 28.)

United States not liable for unauthorized wrongs done by revenue officers. (*United States v. Cummings*; appeal from Court of Claims, 35 Int. Rev. Rec., 142; 130 U. S., 453.)

The Government can not be made responsible for the acts of its officers where the acts complained of were in themselves torts.

The general principle is that governments can not be held liable for unauthorized wrongs inflicted by their officers, though occurring while they are engaged in the discharge of official duties. (*Gibbons v. United States*, 8 Wall., 269; *Langford v. United States*, 101 U. S., 341; *United States v. Jones*, 131 U. S., 116; *Hill v. United States*, 149 U. S., 593; *Joel Mann v. United States*, 32 Ct. Clms., 581. See notes under sec. 987, p. 371.)

The Commissioner of Internal Revenue alone has authority to award an allowance for the refund of taxes illegally assessed and paid, and his award is final and conclusive unless impeached for fraud or irregularity.

The Secretary of the Treasury has authority to make a regulation that appeals for refund of taxes should be presented through collectors. When, under such regulations, an appeal is delivered to a collector within two years after the tax is paid, it is a seasonable presentation to the Commissioner within the terms of the statute.

Duties of the Comptroller of the Treasury. (*Real Estate Savings Bank of Pittsburg v. The United States*, 16 Ct. Clms., 335; 27 Int. Rev. Rec., 153.)

Where the Commissioner of Internal Revenue, in a case within the scope of his authority and jurisdiction, has ordered a refund of an overpaid tax, a court can not inquire as to the sufficiency of the evidence before him. (*Woolner v. United States*, 13 Ct. Clms., 355; 24 Int. Rev. Rec., 181.)

Although the Comptroller of the Treasury must sign a warrant for the payment of a refund allowed by the Commissioner of Internal Revenue, neither he, nor any accounting officer, has authority to review the Commissioner's decision. (*Bank of Greencastle v. United States*, 15 Ct. Clms., 225; 26 Int. Rev. Rec., 126.)

Decisions by the Commissioner of Internal Revenue, in cases of refunding taxes, are binding, and, in the absence of fraud or mistake in calculation, not subject to revision. (*Dugan v. United States*, 34 Ct. Clms., 458; Vol. 1, Treas. Dec. (1899), No. 21285. See also *Davidson v. United States*, 21 Ct. Clms., 298; *Nixon v. United States*, 18 Ct. Clms., 448; 29 Int. Rev. Rec., 157; *Louisville v. United States*, 31 Ct. Clms., 1.)

An allowance by the Commissioner of Internal Revenue under this section of a claim for refundment of taxes erroneously collected is conclusive as to the facts upon which the allowance is made, but not as to questions of law arising therein. (VI Comp. Dec., 259.)

An application filed with the Commissioner of Internal Revenue for the refunding of taxes alleged to have been erroneously or illegally assessed and collected, though informal or defective, may nevertheless be regarded as a claim, so far at least as to be a foundation for an amendment. (14 Op. Atty. Gen., 615.)

Where a distiller in consequence of the destruction of the stamp is forced to affix a new one, the Commissioner, on proof of these facts, may direct the price of the second stamp, or rather the tax thus a second time exacted, to be refunded, under the power given him to refund taxes illegally assessed. (13 Op. Atty. Gen., 574.)

The Commissioner of Internal Revenue has no authority under this section to refund to a surety on a distiller's bond who has paid a judgment recovered against him thereon the amount of such judgment, when the Commissioner finds that the tax upon which this recovery was had was not illegally assessed, but was justly due from the distiller, and the only claim for refund is founded on the allegation that the surety was not liable therefor on his bond. (*Seat v. United States* (1883), 18 Ct. Clms., 458.)

Under section 3220, the Commissioner is authorized to pay to the plaintiff in a judgment recovered against a collector of internal revenue for damages for a seizure of property for an alleged violation of the internal-revenue laws made by the collector under the direction of a revenue agent connected with the office of the supervisor of internal revenue the amount of such judgment, and is not restricted to the payment of such amount to the collector. Judgment may be paid without certificate of probable cause. (*United States v. Frericha*, 124 U. S., 315; 34 Int. Rev. Rec., 39.)

Regulation relative to transmitting claims for refund to Secretary. (*Dupasseur v. United States*, 19 Ct. Clms., 1.)

As to suits to enforce allowances. (*Boehm v. United States*, 21 Ct. Clms., 290.)

Various acts of Congress relative to refund commented upon. (*White v. Arthur*, 10 Fed. Rep., 80.)

Receipts on Form No. 1 must be filed with the claim for refund. Other instructions relative to the preparation of claims. (Vol. 2, Treas. Dec. (1899), No. 21705.)

Circular No. 174, dated October 30, 1877, relative to the taking of additional testimony in support of claims for abatement or refund of taxes.

Schedule A.—Evidence required in support of claims for amounts paid for adhesive stamps used in error or excess. (Vol. 2, Treas. Dec., (1899), No. 20875.)

Relative to special taxes and penalties.—Claims for refunding to be made on Form 46. (Circular letter June 20, 1899, Vol. 1, Treas. Dec., No. 21282.)

Stamp tax—Refunding.—Revised ruling as to refunding amounts paid for documentary stamps used in error or excess, and as to the redemption of unused documentary stamps. (Vol. 2, Treas. Dec. (1899), No. 21706.)

Taxes on spirits
accidentally de-
stroyed.

SEC. 3221, as amended by section 6, act of March 1, 1879 (20 Stat., 327). The Secretary of the Treasury, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without any fraud, collusion, or negligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any distillery warehouse, or bonded warehouse of the United States and before the tax thereon has been paid, may abate the amount of internal taxes accruing thereon, and may cancel any warehouse bond, or

enter satisfaction thereon, in whole or in part, as the case may be. And if such taxes have been collected since the destruction of said spirits, the said Secretary shall refund the same to the owners thereof out of any moneys in the Treasury not otherwise appropriated. *And when any distilled spirits are hereafter destroyed by accidental fire or other casualty, without any fraud, collusion, or negligence of the owner thereof, after the time when the same should have been drawn off by the gauger and placed in the distillery warehouse provided by law, no tax shall be collected on such spirits so destroyed, or if collected, it shall be refunded upon the production of satisfactory proof that the spirits were destroyed as herein specified.*

This section provides allowance for loss by accidental fire or other unavoidable accident when the manufacture of spirits has been completed and they are destroyed before being drawn off and carried into the distillery warehouse and when the whisky is destroyed in the distillery warehouse.

Section 8, act of May 28, 1880 (§ 3309a, p. 191), releases the distiller from the payment of tax upon spirits destroyed by accident while in the process of manufacture.

If the spirits are removed from a distillery warehouse to a manufacturer's warehouse, and are lost in the course of such removal, section 15 of the act of May 28, 1880, provides for remission of the tax. (§ 3433b, p. 296.)

A similar provision is made where spirits are removed from a distillery warehouse for export. (Act Dec. 20, 1879, § 3330b, p. 207.)

(Greenbrier Distillery Company v. Johnson, internal revenue collector, *et al.*, 88 Fed. Rep., 638.)

This section applicable to brandy stored in special bonded warehouses. (§ 5, act of March 3, 1877, p. 212.)

Secretary Manning's construction of the law relative to abatement of tax on spirits said to have been lost from packages in warehouse. (31 Int. Rev. Rec., 189.)

Allowance for loss in warehouse. (§ 3294a p. 178 and § 3294b, p. 179.)

Leakage not casualty. (Revised Ruling of the Department May 25, 1894, giving historical review of the laws; 40 Int. Rev. Rec., 173.)

The collapse of a barrel filled with whisky from the pressure of other barrels superimposed upon it is not a casualty within the meaning of the law. (Letter from Secretary of the Treasury to Commissioner Int. Rev., July 24, 1894; 40 Int. Rev. Rec., 237.)

"Casualty," means an accident; an event not to be foreseen or guarded against. Excessive and unusual summer heat is not a casualty, neither are undiscovered worm holes in whisky barrels a casualty within the meaning of this section. (Cryetal Springs Distilling Company v. Cox, collector, circuit court Kentucky, 1891; 47 Fed. Rep., 693; 37 Int. Rev. Rec., 328.)

Decision affirmed, circuit court of appeals, 1892. (49 Fed. Rep., 555.)

Unavoidable casualty signifies events or accidents which human prudence, foresight, and sagacity can not prevent. (Wells v. Castees, 3 Gray, 325.)

Proof required in cases of destruction of distilled spirits by incendiaries. (43 Int. Rev. Rec., 285.)

Denial of claim for refund of tax on spirits alleged to have been destroyed by incendiary fire while in warehouse; insufficient evidences. (Letter from Secretary of the Treasury, October 15, 1895; 42 Int. Rev. Rec., 49.)

Where spirits are withdrawn from warehouse tax-paid and stamped, and afterwards destroyed by accident, the tax can not be refunded. (Vol. 1, Trsas. Dec., 1898, No. 18996.)

No provision authorizing relief when spirits are stolen from warehouse. (Vol. 1, Trsas. Dec., 1898, No. 19520.)

Can abate the tax on spirits which have been in bonded warehouse beyond bonded period. (18 Op. Atty. Gen., 379; 32 Int. Rev. Rec., 94.)

The destruction of spirits stored in distillery warehouses by fire while in the warehouse constituted a "removal," so as to make the tax payable before the expiration of the three years. (48 Fed. Rep., 714, reversed; *United States v. Peace et al.*, 53 Fed. Rep., 999.) See *Insurance Companies v. Thompson*. (95 U. S. (5 Otto), 547.)

If accounting officers refuse to allow a claim after the Secretary's decision in its favor, claimant can recover in Court of Claims. (*Hoffheimer Bros. v. United States*, 20 Ct. Clms., 371.)

Liability of obligors on warehousing bonds to pay the tax on spirits destroyed in a distillery warehouse can be relieved only in the manner prescribed by the statute. (*Farrell v. United States*, 8 Biss., 259; 99 U. S. (9 Otto), 221; 25 Int. Rev. Rec., 83.)

The statute (§ 3221) contemplates that the burden of proof shall be upon the applicant. (Opinion of Solicitor of the Treasury. Letter to Secretary of the Treasury of October 21, 1885.)

A revocation of an order for abatement under section 3221, R. S., does not restore the previous liability of the obligors on the warehousing bond to pay the tax on the spirits claimed to have been destroyed. (*United States v. Alexander et al.*, 110 U. S., 325.)

Regulations and instructions governing the abatement of taxes on spirits destroyed by fire, Series 7, No. 7, Revised, and No. 14, Revised.

Assessment of tax on spirits destroyed by fire. (Circular No. 349, 36 Int. Rev. Rec., 277.)

Retrospective effect of preceding section.

SEC. 3222. The preceding section shall take effect in all cases of loss or destruction of distilled spirits as aforesaid which have occurred since January one, eighteen hundred and sixty-eight.

This does not embrace the later addition made to section 3221 by act of March 1, 1879, section 6, which by its own terms expressly relates only to spirits thereafter destroyed. (See italicized portion of § 3221, p. 107.)

When tax on lost spirits is indemnified by insurance.

SEC. 3223, as amended by section 3, act of March 1, 1879 (20 Stat., 327). When the owners of distilled spirits in the cases provided for by the two preceding sections may be indemnified against such tax by a valid claim of insurance for a sum greater than the actual value of the distilled spirits before and without the tax being paid, the tax shall not be remitted to the extent of such insurance.

The liability for tax on bonded spirits is an insurable interest. (*Insurance Company v. Thompson et al.*, 95 U. S. (5 Otto), 547.)

An insurance policy upon whisky in bond, without reference to the Government tax, entitles the assured to include the tax in his recovery in case of loss, if the assured is liable for the tax. (*Hedger v. Union Insurance Company*, circuit court, district of Kentucky, 17 Fed. Rep., 498.)

Suits to restrain assessment or collection of taxes.

SEC. 3224. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

The constitutionality of a law can not be inquired into in an injunction suit. (*The Delaware Railroad Company v. Prettyman*, collector, 17 Int. Rev. Rec., 99.)

A collector can not be restrained from collecting an assessment by injunction. (*Pullan v. Kissinger*, 2 Abb. (U. S.), 94; 11 Int. Rev. Rec., 197; *Alkan and Swenger v. Bean*, 8 Biss., 83; 23 Int. Rev. Rec., 351; *Kensett v. Stivers*, 27 Int. Rev. Rec., 1; 18 Blatch., 397; 10 Fed. Rep., 517; *State Railroad Tax Cases*, 92 U. S. (2 Otto), 613; *Snyder v. Marks*, 109 U. S., 189; 29 Int. Rev. Rec., 403; *Keely v. Sanders*, 99 U. S., 443; *Robbins v. Freedom*, collector, 14 Int. Rev. Rec., 28; *United States v. Hodson*, 14 Int. Rev. Rec., 100; *Roback v. Taylor* (1866), 4 Int. Rev. Rec., 170.)

Purely injunction bills can not be maintained to restrain the collection of taxes upon the sole ground of their unconstitution-

ality. (*Allen v. Pullman's Palace Car Company*, 139 U. S., 658.)

The courts will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties. (*United States v. Black*, Commissioner of Pensions, 128 U. S., 40.)

The court in this case followed an earlier decision of *Decatur v. Paulding* (14 Pet., 497), and made clear the distinction between the mere ministerial act of the executive officer, which may be controlled by the courts by mandamus, and an act in the performance of which an officer is vested with quasi-judicial discretion.

In matters which require an executive officer of the United States to exercise judgment or consideration, or which are dependent upon his discretion, no rule will issue for a mandamus to control his action. (*Carriek v. Lamar*, 116 U. S., 423.)

When mandamus may issue. (*Marbury v. Madison*, 1 Cranch (U. S.), 137; *United States v. Shurz*, 102 U. S., 378.)

A bill for a mandatory injunction, requiring a collector to accept an export bond for certain spirits in a bonded warehouse after the bonded period has expired, and allow their withdrawal for export without requiring payment of the tax thereon, is in effect a bill to restrain the collection of internal-revenue taxes, which the court is forbidden to entertain. (*Miles v. Johnson*, collector, 59 Fed. Rep., 38; 40 Int. Rev. Rec., 10.)

A collector can not be restrained by injunction from making a seizure. (See under § 3163, p. 72.)

Instructions to collector as to obeying subpoena and producing records. (34 Int. Rev. Rec., 261.)

Subpoena against a collector of internal revenue—Habeas corpus.—A collector of internal revenue is justified in refusing to testify or furnish copies of official papers, acting under instructions from the Department. (Decision of Judge Evans, United States district court, district of Kentucky, discharging the collector; *in re David N. Comingore*, collector (1899), 96 Fed. Rep., 552; Vol. 2, Treas. Dec., No. 21584.)

SEC. 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement, or return was not false nor fraudulent, and did not contain any understatement or undervaluation.

Suits to recover taxes collected under second assessment, burden of proof as to fraud, etc.

Bergdoll v. Pollock (95 U. S., 337).

SEC. 3226. No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided*, That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section.

Suit for recovery of taxes wrongfully collected.

It is clearly not the intent of the statute to allow the collector to be sued unless the taxpayer has first applied for relief to the Commissioner within the time and manner pointed out by law, and relief has been denied him. (*Cheatham et al. v. United*

States, 92 U. S., 85; 22 Int. Rev. Rec., 311; King's County Savings Institution v. Blair, 116 U. S., 200; 32 Int. Rev. Rec., 30.)

A suit against an internal-revenue collector to recover taxes alleged to have been illegally collected is cognizable in the circuit court both under section 629, p. 357, giving the court jurisdiction of causes arising under any law providing internal revenue, and under act March 3, 1887, giving it jurisdiction of causes arising under the laws of the United States.

As the right to sue the United States through its collectors, to recover taxes alleged to have been illegally collected, is only a remedy given by statute, no such right exists unless the conditions prescribed by sections 3226, 3227 are strictly complied with, namely, that an appeal must first be taken to the Commissioner of Internal Revenue, and the suit must be brought within two years from the date of his decision. (*Commissioners of the Sinking Fund of Louisville v. Buckner*, 48 Fed. Rep., 533.)

Not necessary to make a claim for refund if claim for abatement has been made and rejected. (*San Francisco Savings Society v. Cary*, 17 Int. Rev. Rec., 109; (2 Saw., 393.)

The right of a party who has made an involuntary payment under protest, to a collector of taxes having no legal right to demand it, to recover the money back can not be doubted irrespective of any statutory provisions. (*Moore v. Miller*, 23 Wash., D. C., Law Rep., 65.)

In the absence of a statutory rule to the contrary, the defense of a statute of limitations, which is not raised either in pleading, or on the trial, or before judgment, can not be availed of. (*Retzer v. Wood*, collector, 109, U. S., 185.)

A promise on the part of a collector of taxes to repay a tax illegally collected and paid only under protest can not be implied where statute makes it the duty of such officer to pay into the public Treasury without any deduction on account of claims of any description the gross amount that he received.

The prohibition that no suit shall be maintained in any court to recover a tax illegally assessed, except on certain conditions stated in the section, operates on all suits brought subsequently to the time fixed by the act for it to take effect, and on suits brought in State courts as well as in Federal. (*The Collector v. Hubbard*, 12 Wall., 1.)

The inhibition against suits "for the purpose of restraining the assessment or collection of a tax," and the provisions of sections 3226 and 3227, that a suit to recover an illegal tax shall not be brought until after appeal to the Commissioner of Internal Revenue, and must be brought within two years next after the cause of action accrued, do not apply to a proceeding in which the Government is the moving party; and, therefore, upon an application by the United States for an order upon a receiver to pay an assessment the receiver may show that the assessment was erroneous or illegal, without regard to the lapse of time or to whether there has been an appeal to the Commissioner of Internal Revenue. (*United States v. Nebraska Distilling Company* (1897), Circuit Court of Appeals, 80 Fed. Rep., 285.)

Limitation as to suits for recovery of taxes wrongfully collected.

SEC. 3227. No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court unless the same is brought within two years next after the cause of action accrued: *Provided*, That actions for such claims which accrued prior to June six, eighteen hundred and seventy-two, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section.

The words "cause of action" mean the right of action. (*Wright v. Blakeslee*, 101 U. S., 174; 26 Int. Rev. Rec., 179.)
 As to claim pending before Commissioner June 6, 1872. (*James v. Hicks*, 110 U. S., 272.)
 Jurisdiction. (*City of Philadelphia v. Collector*, 5 Wall., 720.)
 State statute of limitations as affected by the Federal statute of limitations. (*Brann v. Sanerwein*, 10 Wall., 218.)
 See on this section Commissioners, etc., *v. Buckner* (1891, 48 Fed. Rep., 533.)

SEC. 3228. All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: *Provided*, That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date.

Claims for refunding, limitation.

Informal application regarded as a claim within the meaning of this section. (14 Op. Atty. Gen., 615.)

When this section does not apply. This limitation does not apply to claims for the redemption of stamps. (§ 3426 as amended, p. 293.) (15 Op. Atty. Gen., 426.)

This limitation does not apply to claims under section 3221, p. 106.

No claim or application for the refunding of taxes under section 3220 will be entitled to consideration by the Commissioner of Internal Revenue unless the same shall be filed within two years from the date of the payment of the tax. (*Kings County Savings Institution v. Blair*, 116 U. S., 200; 32 Int. Rev. Rec., 30.) See also *The Collector v. Hubbard*, 12 Wall., 1.

Claims for taxes recovered by judgments should be presented within two years after date of judgment.

SEC. 3229. The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

Compromises.

Compromises after judgment, remissions and pardons. (See § 3469, p. 372.)

Officers compromising offenses except as authorized by law; penalty. (§ 3169, p. 76, and § 3170, p. 78.)

District attorney or marshal compromising cases illegally; penalty. (§ 3170, p. 78.)

Opinion of the Attorney-General as to the limitation of the power to compromise vested in the Secretary of the Treasury under sections 3229 and 3469, p. 372. (17 Op. Atty. Gen., 213; 27 Int. Rev. Rec., 334.)

Compromises; course of proceedings indicated. (12 Op. Atty. Gen., 472; 8 Int. Rev. Rec., 86.)

Power to compromise ceases as soon as judgment is rendered. (13 Op. Atty. Gen., 479.)

No power to compromise proceedings against officers. (14 Op. Atty. Gen., 8, 43.)

The right to compromise is understood to embrace the criminal as well as the civil liability of the defendant. (13 Op. Atty. Gen., 480.)

Can not compromise taxes legally due from a solvent taxpayer. (16 Op. Atty. Gen., 249; 25 Int. Rev. Rec., 14. *Dorsheimer v. United States*, 7 Wall., 166; 10 Int. Rev. Rec., 131. *United States v. Roelle et al.*, 24 Int. Rev. Rec., 332.)

Compromise of criminal prosecution bar to suit on bond for penalties. (*United States v. Chouteau*, 102 U. S., 603; 27 Int. Rev. Rec., 49.)

Money deposited for compromise can not be held or set off against tax due. (*Bonghton v. United States*, 12 Ct. Clms., 330; 13 *ibid.*, 284.)

When party complies with terms of compromise it is conclusive. (*Sweeny v. United States*, 17 Wall., 75; *United States v. Child & Co.*, 12 *ibid.*, 232; *Mason v. United States*, 17 *ibid.*, 67.)

Discontinuance on payment of costs a compromise. (Op. Atty. Gen. (Hoar), 11 Int. Rev. Rec., 18; 12 Op. Atty. Gen. (Evarts), 536.)

The payment of costs in compromise cases. Decision by the Attorney-General. (24 Int. Rev. Rec., 130.)

Commissioner may direct an unconditional dismissal of a suit without recommendation of Attorney-General. (12 Op. Atty. Gen., 553.)

Instructions to internal-revenue officers in regard to compromises under sections 3229 and 3469, R. S. (Vol. 1, Treas. Dec. (1898), No. 18854.)

Relative to compromise of liability of obligors on an export bond. (13 Op. Atty. Gen., 115.)

Canadian bank notes paid out by banks in the United States, tax on, compromise. (21 Op. Atty. Gen., 567.)

The Attorney-General exercises superintendence and direction over United States attorneys and general supervision over proceedings instituted for the benefit of the United States, and to him is necessarily intrusted, in the exercise of his sound professional discretion and because of the nature of the subject, the determination of many questions of expediency and propriety affecting the continuance or dismissal of legal proceedings. He may absolutely dismiss or discontinue suits in which the Government is interested; *a fortiori*, he may terminate the same upon terms, at any stage, by way of compromise or settlement. Op. Atty. Gen. (Vol. 1, Treas. Dec. (1899), No. 21270).

Suits against illicit distillers may not be nolle without permission of Attorney-General (§ 3230, R. S.).

Commissioner may instruct United States attorney to prosecute or abstain (§§ 838, p. 74, 3214, p. 100).

Discontinuances of prosecutions.

SEC. 3230. No discontinuance or nolle prosequi of any prosecution under section three thousand two hundred and fifty-seven shall be allowed without the permission in writing of the Secretary of the Treasury and the Attorney-General.

Continuance of internal-revenue cases.

SEC. 3231. It shall be lawful for any court in which any suit or criminal proceeding arising under the internal-revenue laws may be pending, to continue the same at any stage thereof, for good cause shown on motion by the district attorney.

Former laws made applicable.

SEC. 31. *Act June 13, 1898 (30 Stat., 448).* That all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed are hereby made applicable to this Act.

CHAPTER THREE.

SPECIAL TAXES.

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| <p>Sec.
3232. Occupation not to be carried on until tax is paid.
3233. Business to be registered.
[3233a.] Selling on passenger railroad trains or vessels.
3234. Persons in partnership at same place liable for only one tax.
3235. Payment of one special tax not to cover several places of business.
3236. When more than one pursuit is carried on in same place by same person at same time.
3237 (amended). When special tax to be due, how reckoned.
3238. Stamps for special taxes.
3239. Special-tax stamp to be exhibited in place of business.
3240. List of special-tax payers to be exhibited in collector's office.
3241. Death or removal after paying tax; business carried on without additional tax.
3242. Carrying on business without payment of special tax; penalties.
[3242a.] Same.
[3242b.] Section 4, act of August 2, 1886. Same as to oleomargarine.
3243. Payment of special tax not to authorize violation of State laws nor prohibit State taxation.
3244 (amended). Special taxes imposed on whom.
1st. Brewers.
2d. Manufacturers of stills.
3d. Rectifiers.
4th. Retail liquor dealers.
Wholesale liquor dealers.
5th. Retail dealers in malt liquors.
Wholesale dealers in malt liquors.</p> | <p>Sec.
3244 6th. Dealers in leaf tobacco.
8th. Dealers in tobacco defined.
9th. Manufacturers of tobacco defined.
10th. Manufacturers of cigars defined.
11th. Peddlers of tobacco defined.
Act of August 2, 1886, section 3:
Manufacturers of oleomargarine.
Wholesale dealers in oleomargarine.
Retail dealers in oleomargarine.
3245. (Obsolete.)
3246 (amended). Special tax not to apply to vintners nor apothecaries in certain cases.
Act of June 6, 1896, section 3:
Manufacturers of filled cheese.
Wholesale dealers in filled cheese.
Retail dealers in filled cheese.
Act of October, 1, 1890, section 26:
Repealing certain special taxes. Registry.
Act of June 13, 1898—
Section 2:
1st. Bankers.
2d. Brokers.
3d. Pawnbrokers.
4th. Commercial brokers.
5th. Custom-house brokers.
6th. Proprietors of theaters, museums, and concert halls.
7th. Proprietors of circuses.
8th. Proprietors or agents of all other exhibitions or shows.
9th. Proprietors of bowling alleys and billiard rooms.
Section 4:
Tobacco dealers and manufacturers.
Section 36:
Manufacturers, packers, and repackers of mixed flour.</p> |
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SEC. 3232. No person shall be engaged in or carry on any trade or business hereinafter mentioned until he has paid a special tax therefor in the manner hereinafter provided. Occupation not to be carried on until tax is paid.

See section 53, act of October 1, 1890, amending section 3237, Revised Statutes, modifying the above.

It was held in License Tax Cases (5 Wall., 462, 6 Int. Rev. Rec., 36) that the provisions of the act of Congress of June 30, 1864, "to provide internal revenue to support the Government," etc. (13 Stat., 223), and the amendatory acts requiring licenses for certain kinds of business and imposing penalties for not taking out and paying for them, were not contrary to the Constitution or to public policy, and that the provisions of the act of July 13, 1866, "to reduce internal taxation," etc. (14 Stat., 98), for the

imposing of special taxes, in lieu of requiring payment for licenses, removed whatever ambiguity existed in the previous laws, and were in harmony with the Constitution and public policy.

Returns to be made, (Form 11.) (§ 3173, p. 80.)

For failure to make sworn return within time prescribed, without excuse of "sickness or absence," the Commissioner of Internal Revenue is required to add 50 per centum to the special tax. (§ 3176 p. 83.)

Prosecutions not to be commenced (except in cases of peddlers of liquors) against special-tax payers who make return and pay the tax at any time before expiration of the calendar month in which liability began. (Vol. 1, Treas. Dec. (1898), No. 18946, p. 225.)

Where a person, after his arrest for failure to pay special tax as required by law, proffers to the collector the amount of the tax and 50 per cent penalty, upon his signing and swearing to return, Form 11, the collector should receive the money proffered. This does not relieve such person from his criminal liability. (Vol. 2, Treas. Dec. (1899), No. 21850.)

Trade or business to be registered.

SEC. 3233. Every person engaged in any trade or business on which a special tax is imposed by law shall register with the collector of the district his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and their places of residence, shall be so registered.

Special-tax stamps may be issued for certain kinds of business on passenger railroad trains or vessels.

[SEC. 3233a.] *Joint resolution May 8, 1876 (19 Stat., 213).* That nothing contained in chapter three of title thirty-five of the Revised Statutes shall prevent the issue, under such regulations as the Commissioner of Internal Revenue may prescribe, of special-tax stamps to persons carrying on the business of retail dealers in liquors, retail dealers in malt liquors, or dealers in tobacco, upon passenger railroad-trains or upon steamboats or other vessels engaged in the business of carrying passengers.

The special-tax stamps issued for the retailing of wine and liquor on buffet cars attached to passenger railway trains are to be made in general terms for such cars in "the United States," in view of the impracticability of repeated transfers of such stamps in the various districts and States through which the train passes. (Vol. 1, Treas. Dec. (1899), No. 21318.)

Persons in partnership at same place liable for only one tax.

SEC. 3234. Any number of persons doing business in copartnership at any one place shall be required to pay but one special tax.

No person, firm, company, or corporation shall be engaged in or carry on any trade, business, or profession, until he or they shall have paid the required special tax.

If tax for one year has been paid by a firm which, before the expiration of the year, is dissolved by the retirement of one partner, the other may carry on the same trade or business, at the same place, for the remainder of the year, without again paying such tax or any part thereof. (*United States v. Glab*, 99 U. S., 225; 25 Int. Rev. Rec., 84.)

Payment of one special tax not to cover several places of business.

SEC. 3235. The payment of the special tax imposed shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the collector's register; but nothing herein contained shall require a special tax for the storage of goods, wares, or merchandise in other places than the place of business, nor, except as hereinafter provided, for the sale

by manufacturers or producers of their own goods, wares, and merchandise, at the place of production or manufacture, and at their principal office or place of business, provided no goods, wares, or merchandise shall be kept except as samples at said office or place of business.

Where beer is delivered to customers from a storage house, that house is held to be a place of sale for which special tax is required to be paid, unless there has, in every instance, been prior constructive delivery at a regular place of business elsewhere. (Vol. 1, Treas. Dec. (1898), No. 18999.)

Where warehouses for storage of malt liquors are merely places of storage and not places where customers leave their orders, special tax is not required to be paid therefor, nor a special-tax stamp required to be posted up therein. (Vol. 1, Treas. Dec. (1899), No. 21619.)

SEC. 3236. Whenever more than one of the pursuits or occupations hereinafter described are carried on in the same place by the same person at the same time, except as hereinafter provided, the tax shall be paid for each according to the rates severally prescribed.

When more than one pursuit is carried on in same place by same person at same time.

SEC. 3237, as amended by section 53, act of October 1, 1890 (26 Stat., 567). That all special taxes shall become due on the first day of July, eighteen hundred and ninety-one, and on the first day of July in each year thereafter, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year; and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced to the first day of July following. Special tax stamps may be issued for the months of May and June, eighteen hundred and ninety-one, upon payment of the amount of tax reckoned proportionately under the laws now in force, and such stamps which have been or may be issued for the period ending April thirtieth, eighteen hundred and ninety (*one*) may upon payment of one-sixth of the amount required to be paid for such stamps for one year, be extended until July first, eighteen hundred and ninety-one, under such regulations as may be prescribed by the Commissioner of Internal Revenue.

When special tax to be due.

And it shall be the duty of special tax payers to render their returns to the deputy collector at such times within the calendar month in which the special tax liability commenced as shall enable him to receive such returns, duly signed and verified, not later than the last day of the month, except in cases of sickness or absence, as provided for in section three thousand one hundred and seventy-six of the Revised Statutes.

Returns.

This section is amendatory of sections 3173 (p. 80), 3176 (p. 83), and 3237 (p. 115). It also repeals the proviso to section 3 of the act of August 2, 1886, relative to the special tax of manufacturers of oleomargarine commencing business subsequent to the 30th day of June in any year.

Special-tax payers' returns. Penalty for failure to make sworn return applies to special-tax payers under the war-revenue law. (Vol. 2, Treas. Dec. (1898), No. 19748.)

Time of payment. Special-tax payer, even though he makes sworn return within the calendar month of his liability, is liable to criminal prosecution if he fails to pay the tax within that month and post up the stamp in his place of business. (Vol. 2, Treas. Dec. (1898), No. 20230.)

Stamps for special taxes.

Act Feb. 18,
1875 (18 Stat.,
316).

SEC. 3238. All special taxes imposed by law, including the tax on stills or worms, shall be paid by stamps denoting the tax, and the Commissioner of Internal Revenue is required to procure appropriate stamps for the payment of such taxes; and the provisions of sections thirty-three hundred and *twelve* and thirty-four hundred and forty-six, and all other provisions of law relating to the preparation and issue of stamps for distilled spirits, fermented liquors, tobacco, and cigars, shall, so far as applicable, extend to and include such stamps for special taxes; and the Commissioner of Internal Revenue shall have authority to make all needful regulations relative thereto.

Section 3312 as to distilled spirits, p. 194.

Section 3446 as amended, p. 339.

The act of December 24, 1872 (17 Stat., 401), first required special taxes to be paid by stamps.

Collectors prohibited from issuing receipts in lieu of stamps (§ 3183, p. 88).— From issuing stamps before payment [§ 3169a, p. 77].

Reporting delinquent special-tax payers for assessment.—All persons liable to pay a special tax who failed to pay the same prior to or during the calendar months in which liability thereto occurred should be reported on Form 23, with date of receipt of Form 11, or other application to pay tax noted in column 7, Form 23. (Special No. 185, March 20, 1878. 24 Int. Rev. Rec., 99; Circular 410, Dec. 5, 1893; Circular No. 470, Nov. 20, 1896; 42 Int. Rev. Rec., 473; Circular No. 539, revising No. 470, June 27, 1899; Vol. 1, Treas. Dec., No. 21316.)

Special-tax stamps for the special-tax year ending June 30, 1900. (Circular No. 531, May 4, 1899; Vol. 1, Treas. Dec., No. 21107.)

Stamp not to be issued until Form 11 has been received. (28 Int. Rev. Rec., 37.)

The United States Supreme Court, in the license-tax cases (5 Wall., 462), held that the special-tax stamp is not a license, but merely a receipt for the tax. It puts the United States under no obligation whatever to the holder beyond assuring him against prosecution under the special-tax laws.

Special-tax stamp to be conspicuously placed and kept in place of business.

Act 27 Feb.,
1877 (19 Stat.,
240). Verbal error corrected.

SEC. 3239. Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, except tobacco peddlers, shall place and keep conspicuously in his establishment or place of business all stamps denoting the payment of said special tax; and any person who shall, through negligence, fail to so place and keep said stamps, shall be liable to a penalty equal to the special tax for which his business rendered him liable, and the costs of prosecution; but in no case shall said penalty be less than ten dollars. And where the failure to comply with the foregoing provision of law shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed:

Provided, That nothing in this section shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof.

Posting special-tax stamp. (Circular letter, Sept. 26, 1898; Vol. 2, Treas. Dec., No. 20094.)

The particular place of business, by street and number, to be designated in the stamp. (Vol. 1, Treas. Dec. (1898), No. 18912.)

SEC. 3240. Each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid.

List of special-tax payers to be exhibited in collector's office.

The names in this list should be the true names and not the fictitious ones under which parties may elect to do business. (36 Int. Rev. Rec., 14.)

Production of records of internal-revenue offices, or copies thereof, for use in trial of persons indicted for violating State laws is forbidden. (Regulations, Series 7, No. 12, Revised, Supplement No. 1; Vol. 1, Treas. Dec. (1898), No. 19245; 34 Int. Rev. Rec., 261; *In re Weeks* (Vt.), 82 Fed. Rep., 730; Judge Evans's decision *in re David N. Comingore*, collector Sixth district of Kentucky; Vol. 2, Treas. Dec. (1899), No. 21584; 96 Fed. Rep., 552.)

Regulations prohibiting the giving out by collectors of records in their offices, or copies thereof, for purposes not contemplated by the internal-revenue laws.

As to any other records than those relating to special-tax payers, collectors are also forbidden to furnish them, or any copies thereof, at the request of any person. Where copies thereof are desired for the use of parties to a suit, whether in a State court or in a court of the United States, collectors should refer the persons interested to the following regulation of the Treasury Department, namely:

"In all cases where copies of documents or records are desired by, or on behalf of, parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only, and on a rule of the court upon the Secretary of the Treasury requesting the same." (Series 7, No. 12, Revised.

Information (departmental), how furnished. (Circular No. 15, Jan. 22, 1898; Vol. 1, Treas. Dec. (1898), No. 18858.)

Records in a collector's office relating to special-tax payers are based on returns made by these persons under compulsion of law for the sole purpose of raising revenue for the United States. Collectors are not permitted to send out these records, or copies thereof, for use against the special-tax payers in cases not arising under the laws of the United States. (Vol. 1, Treas. Dec. (1898), No. 19190.)

While all persons are entitled to inspect Record No. 10 in the collector's office at reasonable and proper times, and are not prohibited from copying the names and addresses of special-tax payers, yet no person is to be permitted to monopolize the book to the extent of interfering with the collector's use of it or to the exclusion of other persons. (Vol. 1, Treas. Dec. (1898), No. 19225.)

The regulations prohibiting collectors from sending out their records, or making and furnishing copies thereof, do not authorize them to prevent the public inspection of Record No. 10 in their offices. (Vol. 1, Treas. Dec. (1898), No. 19332.)

SEC. 3241. When any person who has paid the special tax for any trade or business dies, his wife or child, or executors or administrators or other legal representatives, may occupy the house or premises, and in like manner carry on, for the residue of the term for which the tax is paid, the same trade or business as the deceased before carried on, in the same house, and upon the same premises, without the payment of any additional tax. And when any person removes from the house or premises for which any trade or business was taxed to any other place, he may carry on the trade or business specified in the collector's register at the place to which he removes, without the payment of any additional tax:

Death or removal after paying tax; business carried on without additional tax.

Provided, That all cases of death, change, or removal, as aforesaid, with the name of the successor to any person deceased, or of the person making such change or removal, shall be registered with the collector, under regulations to be prescribed by the Commissioner of Internal Revenue.

A special-tax payer who discontinues business is not entitled to any rebate for the unexpired portion of the year for which the special-tax stamp was issued.

Special-tax stamps are not transferable from one dealer to another. When a new member is added to a firm paying special tax, a new stamp will be required. When two persons, each holding a stamp for business carried on by himself, form a partnership, the firm (a separate person, in law, from either of them) must pay special tax. Stamps for separate persons can not be joined together to answer for a partnership. (Vol. 1, Treas. Dec. (1898), No. 19189; 35 Int. Rev. Rec., 285.)

No additional special tax in case of change of firm, one or more of its members succeeding to and carrying on the business at same place. (United States v. Adam Glab, 99 U. S. (9 Otto), 225; 25 Int. Rev. Rec., 84.)

A member of a firm who has acquired the interest of the other members of the firm is entitled to transfer the business to another location without payment of additional special tax. (United States v. Davis, 35 Int. Rev. Rec., 46; 37 Fed. Rep., 468; Circular No. 324, 35 Int. Rev. Rec., 109.)

Regulations governing the transfer of stamp upon removal of business from one place to another within a district or from one district to another. (Unnumbered, June 4, 1889.)

When registration is made by a special-tax payer, with the collector who issued his stamp, of the fact of the removal of his business to another place in the same district, the collector shall enter in his alphabetical list opposite the name of the special-tax payer the place to which such removal is made and the date of the removal, and shall note on the face of the special-tax stamp its transfer to that place at that date, stating clearly therein the particular location where said business is to be carried on.

When such removal is made to another collection district the collector shall note the transfer on his alphabetical list, stating clearly the location where said business is to be carried on, and shall also state the same on the face of the stamp, and then transmit the stamp to the collector of the district to which said business is removed, who shall enter the name, business, and place of business of the taxpayer in his alphabetical list, in the same manner as he is required by section 3240, Revised Statutes, to enter the names, places, and business of taxpayers who pay their taxes in his district, and shall then transmit the special-tax stamp to the taxpayer.

Collector has no discretion as to granting or declining to grant application for transfer of special-tax stamp. (Vol. 2, Treas. Dec. (1898), No. 20338.)

A member of a firm who, upon its dissolution, carries on the business himself without associating any other person with him therein is entitled to continue the business under the firm's special-tax stamp and to have such stamp transferred to any other place to which he removes the business. (Vol. 2, Treas. Dec. (1898), No. 20346.)

Where new partners are taken into a firm, thereby dissolving the old firm and creating a new partnership, the new firm thus created can not, under the law, carry on business under the special-tax stamp of the old firm. It must make return and pay its own special tax reckoned from the first day of the month in which it began the business. (Vol. 1, Treas. Dec. (1899), No. 20550.)

A special-tax payer's wife may continue business under his stamp. (Vol. 1, Treas. Dec. (1898), No. 19026.)

A mere change of name of a firm to which a special-tax stamp has been issued does not necessitate the taking out of a new stamp. (Vol. 1, Treas. Dec. (1898), No. 19064.)

A special-tax stamp taken by a woman as a retail liquor dealer, in her own name, is sufficient for the same business conducted by her husband, who takes charge of it upon her retirement therefrom; he is not required to pay special tax and take out a stamp in his own name because of the fact that a town license was refused to her, but issued to him. (Vol. 1, Treas. Dec. (1898), No. 19411.)

SEC. 3242. * * * [Every person who carries on the business of a manufacturer of tobacco, snuff, or cigars, dealer in manufactured tobacco, dealer in leaf tobacco, or retail dealer in leaf tobacco, without having paid a special tax therefor, as provided by law, shall, besides being liable to the payment of the tax, be fined not more than five hundred dollars or be imprisoned not more than one year, or both, at the discretion of the court.] And every person who carries on the business of a brewer or wholesale or retail dealer in malt liquors, without having paid a special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than ten dollars nor more than five hundred dollars.

Carrying on business without payment of special tax.

Sec. 16, act Feb. 8, 1875.

Part in brackets repealed by sec. 26, act Oct. 1, 1890.

The portion of this section which is omitted relates to rectifiers, liquor dealers, etc., and was superseded by the following section.

Manufacturers of tobacco selling without having paid special tax; penalty. (§ 3372, p. 247; § 4, act June 13, 1898, p. 140.)

Manufacturers of cigars selling without payment of special tax; penalty. (§ 3400, p. 264; § 4, act June 13, 1898, p. 140.)

[SEC. 3242a.] *Sec. 16, act of February 8, 1875 (18 Stat., 307).* That any person who shall carry on the business of a rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, without having paid the special tax as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than one hundred dollars nor more than five thousand dollars and imprisoned not less than thirty days nor more than two years.

Rectifiers, liquor dealers, etc., carrying on business without paying special tax.

Distiller carrying on business without giving bond, or with intent to defraud.

And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises; and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery which shall be found in any such building, yard, or inclosure, and all the right, title, and interest

Penalties.

of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

The penalty is incurred by a rectifier who omits to pay the special tax irrespective of any intention to defraud. (*United States v. Rectifying Establishment of Sloss*, 11 Int. Rev. Rec., 46.)

For decisions in regard to distillers, see p. 168.

Manufacturers of and dealers in oleomargarine carrying on business without payment of special tax.

[SEC. 3242b.] *Sec. 4, act of August 2, 1886 (24 Stat., 209).* That every person who carries on the business of a manufacturer of oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than one thousand and not more than five thousand dollars; and every person who carries on the business of a wholesale dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than five hundred nor more than two thousand dollars; and every person who carries on the business of a retail dealer in oleomargarine without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than fifty nor more than five hundred dollars for each and every offense.

Payment of tax after the offense not a bar to prosecution. (*United States v. Van Horn*, 20 Int. Rev. Rec., 145; *United States v. Devlin*, 6 Blatch., 71; *United States v. Ellis*, 15 Int. Rev. Rec., 43.)

Special tax stamp not retroactive. (*United States v. Angell*, 11 Fed. Rep., 31.)

Payment of special tax not to authorize violation of State laws, nor prohibit State taxation.

SEC. 3243. The payment of any tax imposed by the internal-revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

McGuire v. Commonwealth, 3 Wall., 387; License Tax cases, 5 *ibid.*, 462; 6 Int. Rev. Rec., 36.

A license from the Federal Government, under the internal-revenue act of Congress, is no bar to an indictment under a State law prohibiting the sale of intoxicating liquors. (*Pervear v. The Commonwealth*, 5 Wall., 475.)

The License Tax cases, 5 Wall., 462, are affirmed in the case of *Pervear v. The Commonwealth*.

The act of August 2, 1886 (24 Stat., 209), does not give authority to those who pay the taxes prescribed by it to engage in the manufacture or sale of oleomargarine in any State which lawfully forbids such manufacture or sale, or to disregard any regulations which a State may lawfully prescribe in reference to that article, and that act is not a regulation of commerce among the States. The statute of Massachusetts "to prevent deception in the manufacture and sale of imitation butter," is not in conflict with the clause of the Constitution of the United States investing Congress with power to regulate commerce among the States. (*Plumley v. Massachusetts*, 155 U. S., 461.)

Persons who engage in the sale of alcoholic liquor, even

though such business is a violation of the law of their State, are nevertheless required to pay special tax under the internal-revenue laws of the United States. The stamp, however, issued to them is not a license, and does not protect them from prosecution, conviction, and sentence under the State law. (Vol. 2, Treas. Dec. (1899), No. 21851.)

SEC. 3244, *as amended*. Special taxes are imposed as follows: Special taxes.

First. Brewers shall pay one hundred dollars. Every person who manufactures fermented liquors of any name or description for sale, from malt, wholly or in part, or from any substitute therefor, shall be deemed a brewer: *Provided*, That any person who manufactures less than five hundred barrels a year shall pay the sum of fifty dollars. Brewers.

Rice beer fermented is a fermented liquor made from a substitute for malt. (34 Int. Rev. Rec., 253.)

Ruling in regard to manufacture of small beer. (35 Int. Rev. Rec., 133.)

Hop beer. Tax and special tax. (Vol. 2, Treas. Dec., 1898, No. 20233.)

Second. Manufacturers of stills shall each pay fifty dollars, and twenty dollars for each still or worm for distilling made by him. Any person who manufactures any still or worm to be used in distilling shall be deemed a manufacturer of stills. Manufacturers of stills.

SEC. 18, *act of May 28, 1880 (21 Stat., 145)*. *That subsection second of section thirty-two hundred and forty-four shall not apply to distillers in registered distilleries who manufacture for their own use wooden stills, but each of said distillers shall give notice to the collector of the district in which his distillery is located of each still manufactured before the same is used.* Exception.

Manufacturers of stills for pharmaceutical and scientific purposes. (22 Int. Rev. Rec., 397; 36 *ibid.*, 285; Vol. 2, Treas. Dec. (1898), No. 20063.)

A still made for use in the manufacture of vinegar comes under the ruling as to stills not used in the distillation of the spirits defined by the internal-revenue laws, and special tax is not required to be paid thereon.—Ruling 20878 revoked. (Vol. 3, Treas. Dec. (1900), Int. Rev. No. 11.)

Liability to special tax of manufacturers of stills of 5-gallon capacity or less, and of stills used for pharmaceutical purposes. Settled ruling, 36 Int. Rev. Rec., 285.

Stills of five gallons or less. (33 Int. Rev. Rec., 397.)

All stills "set up" required to be registered. (§ 3258, p. 154.)

Ruling in regard to repairing of stills. (35 Int. Rev. Rec., 133.)

Separate special tax to be paid on a still for distillation of spirits and on a worm for such distillation. Settled ruling as to a person who is employed by a distiller to manufacture parts of a wooden still. (Vol. 2, Treas. Dec. (1899), No. 21835.)

SEC. 10, *act of March 1, 1879 (20 Stat., 327)*. *Upon all stills manufactured for export, and actually exported, there shall be allowed a drawback, where the tax thereon has been paid, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.* Drawback on stills.

See Regulations, Series 7, No. 13.

Third. Rectifiers of distilled spirits shall pay two hundred dollars. Rectifiers.

Every person who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through

continuous closed vessels and pipes, until the manufacture thereof is complete, and every wholesale or retail liquor-dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who, without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any materials, manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying.

Sec. 4, act Mar. 1, 1879 (20 Stat., 327).

Rectifiers of less than 500 barrels a year.

Provided, That any person who rectifies, purifies, refines, or manufactures as aforesaid less than five hundred barrels a year, counting forty gallons of proof spirits to the barrel, shall pay one hundred dollars.

And provided, That nothing in this section shall be held to prohibit the purifying or refining of spirits in the course of original and continuous distillation through any material which will not remain incorporated with such spirits when the manufacture thereof is complete.

Rectifying within 600 feet of a distillery.

Act Feb. 18, 1875 (18 Stat., 316).

Penalty for collecting a special tax.

And provided further, That no officer shall collect any special tax for rectifying distilled spirits on any premises distant less than six hundred feet in a direct line from any distillery. And every officer who collects any special tax in violation of this proviso shall be liable to a penalty of five thousand dollars for each offense.

Rectifiers or brewers who have paid special tax as "rectifiers or brewers of less than 500 barrels," and who during the same special-tax year desire to increase their product, should make application for a new stamp, of the denomination of \$200 in the case of a rectifier or \$100 in the case of a brewer. On obtaining this new stamp the rectifier or brewer may apply to the Commissioner of Internal Revenue, under section 3426, Revised Statutes, for the repayment to him of the value of the stamp first issued, less 5 per cent deduction therefrom.

[Sec. 3255a.] Druggists recovering alcohol. (24 Int. Rev. Rec., 282.)

Gin, manufacture of. (12 Int. Rev. Rec., 197.)

Rectifying within 600 feet of a distillery. (§ 3266, p. 161, § 3280, p. 167.)

The presence of a filter, consisting of a closely packed pulp through which liquid is forced under pressure, on premises of a wholesale or retail liquor dealer constitutes such dealer a rectifier. (Vol. 1, Treas. Dec. (1898), No. 19060.)

Filtering apparatus.—Permitting certain described filtering apparatus in bottling warehouses, but not on premises of wholesale liquor dealers. (Vol. 1, Treas. Dec. (1899), No. 21106.)

Liability of persons who mix spirits or liquors of different strengths or different kinds. (10 Int. Rev. Rec., 121.)

Rule as to label required on compounds of alcoholic liquor with drugs to entitle them to be regarded as medicinal compounds for the manufacture and sale of which as medicines special tax is not required to be paid. (Vol. 1, Treas. Dec. (1898), No. 18913.)

Ruling as to mixing by retail liquor dealers in quantities of less than five gallons. (43 Int. Rev. Rec., 286.)

Fourth. Sec. 18, act of February 8, 1875 (18 Stat., 309), as amended by section 4, act of March 1, 1879 (20 Stat., 327). That retail dealers in liquors shall pay twenty-five dollars.

Retail liquor dealers.

Every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors, otherwise

than as hereinafter provided, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors.

Wholesale liquor dealers shall each pay one hundred dollars. Wholesale liquor dealers.

Every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors, otherwise than as hereinafter provided, in quantities of not less than five wine gallons at the same time, shall be regarded as a wholesale liquor-dealer.

If the quantity of malt liquor sold at one time exceeds five gallons, the vendor is a wholesale dealer, although the same is not contained in one package. (United States v. Clare, 2 Fed. Rep., 55.)

In prosecutions for selling liquor at wholesale, without payment of special tax, it is not incumbent upon the Government to prove that the gallon measure used by defendant conformed to the legal standard; nor is it necessary to prove that each gallon contained a gallon of proof spirits. (United States v. Hart, 28 Int. Rev. Rec., 226.)

But no distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed, shall be required to pay the special tax of a wholesale liquor-dealer on account of such sales. Distiller not wholesale liquor dealer when.

See SEC. 3318a, p. 198.

Club owning liquors and selling to members. (United States v. Wittig, 2 Low., 466; 22 Int. Rev. Rec., 98; United States v. Woods, 24 *ibid.*, 150; United States v. Rolinger, 28 *ibid.*, 314; United States v. Kallstrom *et al.*, 33 *ibid.*, 152; United States v. Giller, 54 Fed. Rep., 656.)

Every social club that receives orders from its members for alcoholic liquor in any quantity less than five gallons, and furnishes the liquor so ordered and collects pay therefor, "or accepts the consumer's promise to pay in the future," sells the liquor to its members and is a retail liquor dealer under the internal-revenue laws, and is required to pay special tax accordingly. (United States v. The Alexis Club, U. S. District Court, E. D. of Penn.; 98 Fed. Rep., 725; Treas. Dec. (1900), Int. Rev. No. 8.)

Clubs required to pay special tax as liquor dealers for selling to members, but not for billiard tables kept only for the use of the members and invited guests. (Vol. 2, Treas. Dec. (1898), No. 19745.)

A social club in which beer is supplied to its members, who help themselves thereto "and throw their contributions into a box through a slot," furnishes the beer under conditions constituting sale of it to them, and is required to pay special tax therefor under the internal-revenue laws. (Vol. 2, Treas. Dec. (1898), No. 20119.)

Shipping spirits to be paid for on delivery [C. O. D.]. (United States v. Shriver, 31 Int. Rev. Rec., 54; United States v. Ott, 31 *ibid.*, 79; United States v. Cline, 26 Fed. Rep., 515; Jng Liquor cases, 32 Int. Rev. Rec., 70; Circular No. 285; Circular No. 339, modifying No. 285; Decision No. 180 (1890); 36 Int. Rev. Rec., 13.)

Selling liquors by peddlers prohibited. (Circular No. 143; 22 Int. Rev. Rec., 37; 22 *ibid.*, 157.)

Liability for single sale or occasional acts. (United States v. Barnhardt, 20 Int. Rev. Rec., 137; United States v. Shouse, 31 *ibid.*, 120; United States v. Rennecke, 28 Fed. Rep., 847; Letter to Collector Stearns, 31 Int. Rev. Rec., 141; United States v. Jackson, 1 Hughes, 531; Ledbetter v. United States, 170 U. S., 606.)

One is engaged in the business of a retail liquor dealer within the meaning of section 3242 Revised Statutes, if he has liquor on hand to be sold to anyone who applies for it. (United States v. Rennecke, 28 Fed. Rep., 847.)

"Canteens" on military reservations. (34 Int. Rev. Rec., 398.)
 Post exchanges under the complete control of the Secretary of War as governmental agencies not subject to special tax as retail liquor dealers. (*Dugan v. United States*, 34 Ct. Clms. (1899), 458; Vol. 1, Treas. Dec. No. 21285.)

Sale of brandy peaches. (*United States v. Stafford*, 20 Fed. Rep., 720; 30 Int. Rev. Rec., 247; 18 *ibid.*, 105; Vol. 1, Treas. Dec. (1898) No. 19031.)

Sale of bitters. (29 Int. Rev. Rec., 305; 33 *ibid.*, 17; *United States v. Cota*, 17 Fed. Rep., 734; 29 Int. Rev. Rec., 249; *Hostetter's Bitters*, 29 *ibid.*, 273; *United States v. Bibb*, 33 *ibid.*, 391; Circular No. 340; 36 Int. Rev. Rec., 29.)

Liability for manufacture and sale of cocktail bitters (*Angostura Bitters*). (Vol. 2, Treas. Dec. (1899) No. 21689.)

The special taxes of a rectifier and liquor dealer are not required to be paid for the manufacture and sale of Angostura Bitters that are a mere alcoholic extract, suitable only for use medicinally or in giving an agreeable flavor to beverages. (Vol. 2, Treas. Dec. (1899), No. 21802.)

Druggists and others using the flavoring sirup "Claret phosphate and champagne," with carbonated water, in making drinks at soda fountains, are not required to pay special tax therefor. (Vol. 2, Treas. Dec. (1899), No. 21803.)

Bitters sold as a beverage. The fact that the bitters were labeled patent medicine and that the defendant was advised that he might sell the same without a license was no excuse. Parties held liable as liquor dealers. (*United States v. Foster*, 39 Int. Rev. Rec., 9.)

Liability for sale of warehouse certificates for whisky in bond. (Vol. 1, Treas. Dec. (1898), No. 18940.)

Selling warehouse receipts. (26 Int. Rev. Rec., 345; 27 *ibid.*, 237.)

Selling at same time different packages of liquors, aggregating over 5 gallons. (10 Int. Rev. Rec., 98; 31 *ibid.*, 317; *United States v. Hart*, 28 *ibid.*, 226; *United States v. James*, 30 *ibid.*, 24, 29; *United States v. Shouse*, 31 *ibid.*, 120.)

Ruling as to constructive delivery. (Letter to C. W. Moulton, esq., 23 Int. Rev. Rec., 253.)

Liability of party for negotiating sales for others. (14 Int. Rev. Rec., 193; 30 *ibid.*, 93; *United States v. Angell*, 11 Fed. Rep., 34; *United States v. Howell*, 30 Int. Rev. Rec., 246.)

Orders received by an agent and sent to place of business of liquor dealer. (Circular No. 339; 36 Int. Rev. Rec., 13.)

Question of liability of certain merchants to wholesale liquor dealers' special tax for ordering liquors for others. (27 Int. Rev. Rec., 234.)

Selling liquors on fair grounds. (18 Int. Rev. Rec., 81.)

Importers who sell spirits in bond are wholesale liquor dealers. (*United States v. McCullough*, 22 Int. Rev. Rec., 202.)

Commission merchants who, at the request of foreign correspondents, occasionally purchase liquors in quantity, and take charge of shipping the same, and either charge the costs and their commissions upon their books to the account of such correspondents, or draw upon them for the full amount of the purchase price, with costs and commissions, are "wholesale liquor dealers." (*Quinn v. Dimond et al.* (1896), 72 Fed. Rep., 993.)

An importer of alcoholic liquors or compounds thereof who holds a special-tax stamp as a wholesale liquor dealer at his place of business in one city, and sells and delivers packages of these liquors at a place of storage in another city, without prior constructive delivery to the purchasers at the place where such stamp is held, is required to pay additional special tax and to take out the requisite stamp for that storage place. (Vol. 1, Treas. Dec. (1898), No. 19281.)

Selling liquors as pretended agent. (*United States v. Herman Rose*, 28 Int. Rev. Rec., 274.)

The definition of liquor dealer is held not to apply to those acting in the capacity of clerks or agents for an authorized liquor dealer at his place of business, nor to those who merely negotiate sales of spirits, of which they have neither actual nor constructive possession, for owners who make the delivery.

A person negotiating sales and making delivery as agent at a place other than the place of business of the principal thereby becomes a liquor dealer, whether he acts in the name of his principal or not. (Int. Rev. Reg., Series 7, No. 7, revised, 167.)

One who sells a medicinal preparation, knowing that it contains an intoxicating quality, to be used as a beverage, or with the knowledge that it was purchased to be used as a beverage, is a retail liquor dealer. (United States v. Starnes, 35 Int. Rev. Rec., 136; 37 Fed. Rep., 665.)

The law does not treat distilled spirits as a drug or medicine, and doctors and druggists are not privileged to sell it as such without first paying the special tax required of dealers in liquor. (United States v. Stafford, 20 Fed. Rep., 720.)

Druggists and dealers in medicine who sell alcoholic medicinal compounds in good faith, for medicinal use only, are not required to pay special tax as liquor dealers, though they are intoxicating if used immoderately. (United States v. Stubblefield, 40 Fed. Rep., 454.)

The term "domestic" distilled spirits, as used in the law requiring retail liquor dealers to pay a special tax does not include patent or proprietary medicines, manufactured and sold, in good faith, for curative or health-imparting properties, although they may contain a large percentage of distilled spirits as one of their essential ingredients.

The law, however, is not to be avoided by mere deceptive names, and if alcoholic beverages in which the essential ingredient is distilled spirits, disguised by aromatic or other drugs, are commonly bought and sold as and for intoxicating beverages, the same are not to be classed as patent or proprietary medicines, by whatever names they may be known, and the seller thereof is liable to the tax as a retail liquor dealer. (United States v. Wilson; District Court, E. D. Missouri (1895), 69 Fed. Rep., 144; 41 Int. Rev. Rec., 411.)

The sale of beer, whisky, or other alcoholic liquor, which has not been combined with drugs or other medicinal substances, involves the seller in special-tax liability even though it be sold under a label as a medicine. (Vol. 1, Treas. Dec. (1898), No. 19090.)

A fermented liquor made from oranges, sugar, and elder blossoms is wine within the meaning of the internal-revenue laws, and the special tax of a liquor dealer is required to be paid for its sale. (Vol. 1, Treas. Dec. (1898), No. 19089.)

Special tax is not required to be paid for the sale of cider; that is, the juice of apples, whether unfermented or fermented, and whether it is "hard cider" (strongly alcoholic) or not, if no distilled spirits, or wine, or other alcoholic liquor has been added thereto. (Vol. 2, Treas. Dec. (1898), No. 20309.)

Nothing is cider except the juice of apples, fermented or unfermented. Imitation cider, mixed with distilled spirits or wine, is a compound liquor, for the manufacture or sale of which special tax is required. (Vol. 2, Treas. Dec. (1898), No. 20097.)

Concerning the collection of special tax as liquor dealers from distillers who sell distilled spirits in bottles put up under the act of March 3, 1897. (Circular No. 481, August 18, 1897; 43 Int. Rev. Rec., 318.)

Distillers who have discontinued operations and not given bond as distillers are liable to special tax as liquor dealers for selling their distilled spirits. The fact, however, that a person has ceased to operate his distillery does not prevent him from giving bond as a distiller there, with notice of continued suspension, to secure exemption from special tax for selling spirits in the original stamped packages at distillery or place of storage in bond. (Vol. 1, Treas. Dec. (1898), No. 19222.)

Fifth. *Act of February 8, 1875 (18 Stat., 309), as amended by section 4, act of March 1, 1879 (20 Stat 327).* Retail dealers in malt liquors shall pay twenty dollars. Retail dealers in malt liquors.

Every person who sells, or offers for sale, malt liquors in less quantities than five gallons at one time, but who does not deal in spirituous liquors, shall be regarded as a retail dealer in malt liquors.

Retail dealers in malt liquors can not retail spirituous liquors or wines without paying special tax as retail liquor dealers.

No refund of a tax to a R. M. L. D. who becomes a R. L. D. (33 Int. Rev. Rec., 397.)

Special tax on bottled beer; when not imposed. (Letter to Jos. Schlitz Brewing Company, April 5, 1897; 43 Int. Rev. Rec., 193.)

Dealers in any small beer that is a beverage similar to weiss beer, and is either fermented malt liquor, diluted and reduced in alcoholic strength, or is a fermented liquor made from some substitute for malt, are required to pay special tax as malt liquor dealers. (Vol. 1, Treas. Dec. (1898), No. 19154.)

A verdict in favor of defendant in a criminal action does not estop the United States from proving the special-tax liability in a civil action. (United States v. Schneider, 35 Fed. Rep., 107.)

Prosecution must be by indictment or presentment, not by information. (United States v. Johannesen, 34 Fed. Rep., 411.)

Wholesale dealers in malt liquors.

Wholesale dealers in malt liquors shall pay fifty dollars.

Every person who sells, or offers for sale, malt liquors in quantities of not less than five gallons at one time, but who does not deal in spirituous liquors at wholesale, shall be regarded as a wholesale dealer in malt liquors:

Brewers not liable to dealer's tax, when. (§ 3349.)

Provided, That no brewer shall be required to pay a special tax as a dealer by reason of selling in the original stamped packages whether at the place of manufacture or elsewhere, malt liquors manufactured by him or purchased and procured by him in his own casks or vessels, under the provisions of section thirty-three hundred and forty-nine of the Revised Statutes; but the quantity of malt liquors so purchased shall be included in calculating the liability to brewer's special tax of both the brewer who manufactures and sells the same and the brewer who purchases the same.

And it is hereby provided, That no further collection of special tax as retail dealers in malt liquors shall be made from brewers for selling malt liquors of their own manufacture in the original stamped eighth-barrel package. *

No special tax for sales by fiduciary officer of court, etc.

But no special tax shall be held to accrue on a sale of distilled spirits, wines, or malt liquors made by a person who is not otherwise a dealer in liquors, where such spirits, wines, or liquors have been received by the person so selling as security for or in payment of a debt, or as executor, administrator, or other fiduciary, or have been levied on by any officer, under order or process of any court or magistrate, and where such spirits are sold by such person in one parcel only, or at public auction in parcels not less than twenty wine-gallons, nor shall such tax be held to accrue on a sale made by a retiring partner, or the representatives of a deceased partner to the incoming, remaining, or surviving partner or partners of a firm; nor shall the special tax of a wholesale liquor dealer or wholesale dealer in malt liquors be held to apply to a retail dealer in liquors or a retail dealer in malt liquors, because of such retail dealer selling out his entire stock of liquors in one parcel, or in parcels embracing not less than his entire stock of distilled spirits, of wines, or of malt liquors; and section thirty-three hundred and nineteen of the Revised Statutes shall not be held to prohibit a rectifier or liquor dealer from purchasing, in quantities greater than twenty wine-gallons, the distilled spirits sold in one parcel as aforesaid.

No wholesale dealer's tax on sale of entire stock of retail dealer.

Peddling fermented liquors. (26 Int. Rev. Rec., 169.)

Sale of spirits, etc., by sheriff. (33 Int. Rev. Rec., 405.)

Brewers shipping bottled beer C. O. D. (33 Int. Rev. Rec., 77.)

A liquor made from barley malt, fermented by means of a wine yeast, is a fermented malt liquor, for the manufacture of which for sale the special tax of a brewer is required to be paid, and on which tax is imposed by section 3339, Revised Statutes, notwithstanding the fact that by the use of a wine yeast instead of a beer yeast it has the appearance and taste of wine. (Vol. 1, Treas. Dec. (1898), No. 19025.)

Root beer, a fermented liquor made from "roots, barks, herbs, sugar, and bread yeast," if it is not similar to weiss beer or to any of the fermented liquors enumerated in section 3339, Revised Statutes, is not subject to tax under this section; nor is the special tax of a brewer required to be paid for its manufacture for sale. (Vol. 1, Treas. Dec. (1898), No. 19383.)

Special tax is required to be paid for the manufacture and sale of "hop beer" resembling weiss beer. (Vol. 2, Treas. Dec. (1898), No. 20233.)

A brewer holding a special-tax stamp of the smaller class is not required to pay special tax as a brewer of the larger class until the entire quantity of beer produced by him within the special-tax year amounts to 500 barrels. As soon as the quantities produced month by month within that period amount in the aggregate to 500 barrels he must pay the special tax of a brewer of the larger class for the entire year (\$100). He may then send in his stamp of the smaller class for redemption. (Vol. 1, Treas. Dec. (1898), No. 19439.)

Brewers who establish places of storage for bottled beer, and complete sales by deliveries therefrom to purchasers in wholesale quantities, are required to pay special tax as wholesale dealers in malt liquor at every such place. (Vol. 1, Treas. Dec. (1898), No. 19440.)

Where a brewer ships bottled beer marked for delivery to persons who had ordered it, but consigns and waybills the beer in general terms to his agent, instead of shipping it to these persons, it is held that the sale is made at the time and place of the actual delivery of the beer by the agent. (Vol. 2, Treas. Dec. (1899), No. 21852.)

Special tax is required to be paid for the sale of blackberry wine, unless sold by the manufacturer, who made it from berries grown by himself or made it from wild berries gathered by himself or by his employees. When it is bottled for sale he must pay stamp tax and affix the required stamps on each bottle. (Vol. 2, Treas. Dec. (1898), No. 20366.)

Persons calling themselves agents of brewers in the sale of original stamped packages of beer should obtain and furnish abstracts from the books of the brewers, showing how the beer is charged, or billed, and also a statement under oath by the brewers, showing that the beer remains absolutely their property in the hands of these persons until sold, and that these persons are under their orders and control in making such sales. (Vol. 1, Treas. Dec. (1899), No. 21019.)

Persons calling themselves agents of brewers in selling original stamped packages of beer must show that the beer remains absolutely the property of the brewers, in their hands, until sold by them for and on account of the brewers, and not on their own account. (Vol. 2, Treas. Dec. (1899), No. 21836.)

A fermented malt liquor, though diluted to such an extent as to be called nonintoxicating, is a beverage for the sale of which special tax must be paid under the internal-revenue laws; and when it is sold under a label reading "Kraft's Temperantia Invigorating Tonic," stamp tax must also be paid thereon as a medicinal proprietary preparation under Schedule B, act of June 13, 1898, even when it contains no drugs or medicinal ingredients. (Vol. 2, Treas. Dec. (1899), No. 21473.)

Where warehouses for storage of malt liquors are merely places of storage and not places where customers leave their orders, special tax is not required to be paid therefor, nor special-tax stamp required to be posted up therein. (Vol. 2, Treas. Dec. (1899), No. 21619.)

The executor of a person who had been a manufacturer of wine is entitled to sell the wine made by his testator at one "business office" in any quantities, small or large, through an auctioneer, without the payment of special tax; but if the testator was not the manufacturer of the wine, the executor or his auctioneer is not entitled to sell the wine without paying special tax therefor, unless he disposes of the entire quantity of wine at a single sale. (Vol. 2, Treas. Dec. (1899), No. 21648.)

Dealers in leaf tobacco.

Sixth. Amended by section 14, act of March 1, 1879 (20 Stat., 327), and act of March 3, 1883 (22 Stat., 488). * * * Every person shall be regarded as a dealer in leaf tobacco whose business it is, for himself or on commission, to sell, or offer for sale, or consign for sale on commission, leaf tobacco.

Restriction of sales by dealers in leaf tobacco.

Dealers in leaf tobacco shall sell only to other dealers and to manufacturers of tobacco, snuff, or cigars, and to such persons as are known to be purchasers of leaf tobacco for export:

Provided, It shall be lawful for any licensed manufacturer of cigars to purchase leaf tobacco of any licensed dealer or other licensed manufacturer in quantities less than the original package, for use in his own manufactory exclusively.

Special-tax provision repealed by section 26, act of October 1, 1890.

Special tax again imposed by act June 13, 1898. p. 140.

Exemption in the case of sales of leaf tobacco by the grower can not be extended to agents. (Letter to Collector Hunt, November 16, 1897; 43 Int. Rev. Rec., 429.)

Seventh. Retail dealers in leaf tobacco. This paragraph repealed by section 26 of the act of October 1, 1890 (26 Stat., 567). See also section 69 of the act of August 28, 1894 (28 Stat., 509.)

Single sale. (United States v. Kolkmeier, 24 Int. Rev. Rec., 184.)

Sales of tobacco made by farmers. (30 Int. Rev. Rec., 53.)

See section 3360, p. 239.

Eighth, as amended by act of March 3, 1883. (22 Stat., 488.)

Dealers in tobacco.

Every person whose business it is to sell, or offer for sale, manufactured tobacco, snuff, or cigars, shall be regarded as a dealer in tobacco.

Special-tax provision repealed by act October 1, 1890.

Special tax again imposed by section 4, act June 13, 1898.

Employers who buy tobacco and deal it out to their employees at cost, charging them with its cash cost, are subject to the special tax required to be paid under section 3244, Revised Statutes, by those whose business it is to sell or offer for sale manufactured tobacco.

The court said: "In construing doubtful cases of this kind, the possible consequences to the Government and to individuals ought to be borne in mind. The law being one for the raising of revenue, it ought to be construed liberally in favor of the Government." (United States v. Vinson, 8 Fed. Rep., 507.)

Dealers in tobacco, selling tobacco for "sheep dip." (24 Int. Rev. Rec., 145.)

Manufacturers of tobacco.

Ninth. As amended by section 69, act August 28, 1894 (28 Stat., 509).

Every person whose business it is to manufacture tobacco or snuff for himself, or who employs others to manufacture tobacco or snuff, whether such manufacture be by cutting, pressing, grinding, crushing, or rubbing of any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco or snuff, or the putting up for use or consumption

of scraps, waste, clippings, stems, or deposits of tobacco resulting from any process of handling tobacco, or by the working or preparation of leaf-tobacco, tobacco-stems, scraps, clippings, or waste, by sifting, twisting, screwing, or any other process, shall be regarded as a manufacturer of tobacco.

Every person shall also be regarded as a manufacturer of tobacco whose business it is to sell leaf tobacco in quantities less than a hogshead, case or bale; or who sells directly to consumers, or to persons other than duly registered dealers in leaf tobacco, or duly registered manufacturers of tobacco, snuff or cigars, or to persons who purchase in packages for export; and all tobacco so sold by such persons shall be regarded as manufactured tobacco, and such manufactured tobacco shall be put up and prepared by such manufacturer in such packages only as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury shall prescribe: *Provided*, That farmers and growers of tobacco who sell leaf tobacco of their own growth and raising shall not be regarded as manufacturers of tobacco; and so much of section three thousand two hundred and forty-four of the Revised Statutes of the United States, and acts amendatory thereof, as are in conflict with this Act are hereby repealed.

Farmers and growers of tobacco who sell leaf tobacco not manufacturers of tobacco under certain conditions.

Tenth. * * * Every person whose business it is to make or manufacture cigars for himself, or who employs others to make or manufacture cigars, shall be regarded as a manufacturer of cigars. Every person whose business it is to make cigars for others, either for pay upon commission, on shares, or otherwise, from material furnished by others, shall be regarded as a cigar-maker. Every cigar-maker shall cause his name and residence to be registered, without previous demand, with the collector of the district in which such cigar-maker shall be employed; and every manufacturer of cigars employing any cigar-maker who shall have neglected or refused to make such registry shall be fined five dollars for each day that such cigar-maker so offending, by neglect or refusal to register, shall be employed by him.

Manufacturers of cigars.
Act Mar. 3, 1883.

The provision relative to registry of cigar-makers is virtually obsolete. The other provisions of the law on the same subject were stricken out by section 16, act of March 1, 1879 (20 Stat., 347), amending sections 3387, p. 255, and 3389, p. 257, and the omission to strike this out was evidently accidental.

Special tax provision repealed by act October 1, 1890.

Special tax again imposed by act June 13, 1898, p. 141.

Eleventh. * * * Any person who sells or offers to sell and deliver manufactured tobacco, snuff, or cigars, traveling from place to place, in the town or through the country, shall be regarded as a peddler of tobacco.

Peddlers of tobacco.

Provisions as to peddlers of tobacco. (§§ 3381, 3382, 3383, 3384, p. 250.)

Repeal of certain special taxes.—Section 26, act of October 1, 1890, repealed on and after May 1, 1891, special taxes upon dealers in leaf tobacco, retail dealers in leaf tobacco, dealers

in tobacco, manufacturers of tobacco, manufacturers of cigars, and peddlers of tobacco.

Special taxes were reimposed upon the above-named occupations except retail dealers in leaf tobacco and peddlers of tobacco, by the act of June 13, 1898.

Peddlers of tobacco not required to pay special tax, but are required to register and give bond as heretofore. (Vol. 2, Treas. Dec. (1898), No. 19802.)

Requirement
as to registry.

SEC. 26, act of October 1, 1890 (26 Stat., 567) (*Supp. R. S.*, Vol. 1, 862).
* * * Every such dealer in leaf tobacco, * * *

manufacturer and peddler shall, however, register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on, the same as though the tax had not been repealed, and a failure to register as herein required shall subject such person to a penalty of fifty dollars.

SEC. 3, act of August 2, 1886 (24 Stat., 209). Manufacturers of oleomargarine shall pay six hundred dollars. Every person who manufactures oleomargarine for sale shall be deemed a manufacturer of oleomargarine.

Oleomargarine
manufacturers
and dealers.

Wholesale dealers in oleomargarine shall pay four hundred and eighty dollars. Every person who sells or offers for sale oleomargarine in the original manufacturer's packages shall be deemed a wholesale dealer in oleomargarine.

But any manufacturer of oleomargarine who has given the required bond and paid the required special tax, and who sells only oleomargarine of his own production, at the place of manufacture, in the original packages to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in oleomargarine on account of such sales.

When a broker in oleomargarine is not a wholesale dealer. (32 Int. Rev. Rec., 373.)

Retail dealers in oleomargarine shall pay forty-eight dollars. Every person who sells oleomargarine in less quantities than ten pounds at one time shall be regarded as a retail dealer in oleomargarine.

§§ 3232, 3233,
3234, 3235, 3236,
3237, 3238, 3239,
3240, 3241, 3243,
applicable,
pp. 113 to 120.

And sections thirty-two hundred and thirty-two, thirty-two hundred and thirty-three, thirty-two hundred and thirty-four, thirty-two hundred and thirty-five, thirty-two hundred and thirty-six, thirty-two hundred and thirty-seven, thirty-two hundred and thirty-eight, thirty-two hundred and thirty-nine, thirty-two hundred and forty, thirty-two hundred and forty-one, and thirty-two hundred and forty-three of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section, and to the persons upon whom they are imposed: * * *

Rulings as to sales of oleomargarine. (32 Int. Rev. Rec., 365, 381.)

Liability as wholesale dealer. (*Judd O. Hartzell v. The United States*, Vol. 3, Treas. Dec. (1900), Int. Rev., No. 2.)

Manufacturers and wholesale dealers may sell oleomargarine only in original stamped packages of not less than 10 pounds. A retail dealer must sell only from original stamped packages in quantities of not more than ten pounds, packed in new wooden or paper packages marked with his name and address, and the word "*Oleomargarine*" in large letters printed or branded thereon. (See § 6, act Aug. 2, 1886, p. 271.)

Liability of agents or brokers receiving and transmitting orders for oleomargarine to manufacturers. Unless sales are fully completed at the factory to the persons ordering, special tax is required to be paid at the place of delivery. (Vol. 1, Treas. Dec. (1898), No. 18978, p. 267.)

Parties selling oleomargarine are liable to special tax, although they are ignorant that the substance is oleomargarine. (Charge of Judge Jackson in the case of Hubbard & Paul v. Collector Gilkeson, U. S. circuit court, district of West Virginia. Vol. 1, Treas. Dec. (1898), No. 19246; *Eagle v. Nowlin*, Collector. Decision of Judge Baker (1899), 94 Fed. Rep., 646. (Vol. 1, Treas. Dec., No. 21228.)

SEC. 3245. *Obsolete.*

SEC. 3246, *as amended by section 5, act of March 1, 1879 (20 Stat., 327).* Special tax not to apply to vintners nor apothecaries in certain cases.
Nothing in this chapter shall be construed to impose a special tax upon vintners who sell wine of their own growth, or manufacturers who sell wine produced from grapes grown by others, at the place where the same is made or at the general business office of such vintner or manufacturer: *Provided*, That no vintner or manufacturer shall have more than one office for the sale of such wine that shall be exempt from special tax under this act; nor shall any special tax be imposed upon apothecaries as to wines or spirituous liquors which they use exclusively in the preparation or making-up of medicines.

Limitation of a druggist's right to sell liquors without paying special tax. (34 Int. Rev. Rec., 157.)

Circular No. 340, 36 Int. Rev. Rec., 29, gives the ruling in full with reference to the exemption from special tax granted to druggists by the provisions of this section.

An apothecary, who bona fide uses spirituous liquors in the preparation of a medicine to be used as such and not as a beverage, does not violate section 3242, Revised Statutes, by not paying the special tax required of a retail liquor dealer. (*United States v. Calhoun*, 39 Fed. Rep., 604.)

Under the exempting provision of section 3246 a manufacturer of wine may sell the wine at two places without paying special tax as a liquor dealer, viz, the place of manufacture and one "general business office" elsewhere. (Vol. 1, Treas. Dec. (1898), No. 19223.)

Where wine is used for making a "casing fluid for leaf tobacco," unless the material added to the wine changes its character so that it is neither a potable liquid nor a liquid coming under the head of distilled spirits, wine, or malt liquor, special tax is required to be paid for its manufacture and sale, even though it be sold only to cigar manufacturers for use in leaf tobacco. (Vol. 1, Treas. Dec. (1898), No. 19333.)

A manufacturer of medicinal compounds, by the use of tax-paid spirits in combination with drugs, is entitled to the exemption from special tax granted to apothecaries by section 3240, Revised Statutes, when he sells such compounds only under labels specifying the diseases for which they are held out as remedies, and his use of a pharmaceutical still in the preparation of these medicines does not involve him in liability under the internal-revenue laws. (Vol. 1, Treas. Dec. (1898), No. 19347.)

Where grapes are pressed at one place and the juice is then carried to another place and there fermented, the latter is the place of manufacture of the wine, and the manufacturer is there permitted by the provisions of section 3246, Revised Statutes, to sell it without paying special tax. (Vol. 1, Treas. Dec. (1898), No. 19410.)

The fact that a person is an authorized liquor dealer under the internal-revenue laws does not prevent him from engaging also in the compounding of medicines; and if he does so, using spirits in combination with roots, herbs, or drugs, and sells the compound only under a label specifying the diseases for which it is

held out as a remedy, he is an apothecary within the exempting provision of section 3246, Revised Statutes. (Vol. 1, Treas. Dec. (1898), No. 19412.)

A compound of medicinal roots and distilled spirits, if held out not merely as a remedy for disease, but also as "bitters for mixed drinks," is not to be regarded as made in good faith for medicinal use only, and therefore the manufacturer who sells it under such a label is not entitled to the exemption provided by section 3246, Revised Statutes, and is required to pay special tax as a rectifier and liquor dealer. (Vol. 1, Treas. Dec. (1898), No. 19442.)

A person who sells blackberry wine (a fermented liquor made from blackberry juice) is required to pay special tax as a liquor dealer for selling the wine, unless he is the manufacturer of it and has made it from berries grown by himself or gathered wild by himself or by persons in his employ, and the wine is sold by him only at the place of manufacture or at his own "general business office." When he bottles the wine for sale he must pay stamp tax and affix the requisite stamp on each bottle. (Vol. 2, Treas. Dec. (1898), No. 20366.)

A person who buys older berries and makes wine therefrom is not within the exempting provision of section 3246, and is required to pay special tax for selling such wine, even when he sells it at the place of manufacture. (Vol. 1, Treas. Dec. (1899), No. 20541.)

Manufacturers
of filled cheese.

SEC. 3. *Act of June 6, 1896 (29 Stat., 253).*

Wholesale
dealers in filled
cheese.

Manufacturers of filled cheese shall pay four hundred dollars for each and every factory per annum. Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese. Wholesale dealers in filled cheese shall pay two hundred and fifty dollars per annum. Every person, firm, or corporation who sells or offers for sale filled cheese in the original manufacturer's packages for resale, or to retail dealers as hereinafter defined, shall be deemed a wholesale dealer in filled cheese. But any manufacturer of filled cheese who has given the required bond and paid the required special tax, and who sells only filled cheese of his own production, at the place of manufacture, in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in filled cheese on account of such sales.

Retail dealers.

Retail dealers in filled cheese shall pay twelve dollars per annum. Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese, and sections thirty-two hundred and thirty-two, thirty-two hundred and thirty-three, thirty-two hundred and thirty-four, thirty-two hundred and thirty-five, thirty-two hundred and thirty-six, thirty-two hundred and thirty-seven, thirty-two hundred and thirty-eight, thirty-two hundred and thirty-nine, thirty-two hundred and forty, thirty-two hundred and forty-one, thirty-two hundred and forty-three of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section and to the persons, firms, or corporations upon whom they are imposed: *Provided*, That all special taxes under this Act shall become due on the first day of July in every year, or on commencing any manufacture, trade, or business on which said tax is imposed. In the latter case the tax shall be reckoned proportionately from

Taxes, when
due.

the first day of the month in which the liability to the special tax commences to the first day of July following.

SEC. 4. That every person, firm, or corporation who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than four hundred dollars and not more than three thousand dollars; and every person, firm, or corporation who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than two hundred and fifty dollars nor more than one thousand dollars; and every person, firm, or corporation who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than forty nor more than five hundred dollars for each and every offense.

Penalties.

ADDITIONAL SPECIAL TAXES IMPOSED BY THE ACT OF
JUNE 13, 1898. (30 Stat., 448).

SEC. 2. *Act of June 13, 1898.* That from and after July first, eighteen hundred and ninety-eight, special taxes shall be, and hereby are, imposed annually as follows, that is to say:

One. Bankers using or employing a capital not exceeding the sum of twenty-five thousand dollars shall pay fifty dollars; when using or employing a capital exceeding twenty-five thousand dollars, for every additional thousand dollars in excess of twenty-five thousand dollars, two dollars, and in estimating capital surplus shall be included. The amount of such annual tax shall in all cases be computed on the basis of the capital and surplus for the preceding fiscal year. Every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange or promissory notes are received for discount or sale, shall be a banker under this Act: *Provided*, That any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning or investing the same for the benefit of its depositors, and which does no other business of banking, shall not be subject to this tax.

Bankers.

Definition.

Savings banks
exempt in cer-
tain cases.

See under banks, pp. 333-337.

The decision of the Supreme Court in the case of *Selden v. Equitable Trust Company* (94 U. S., 419) construes section 3407, Revised Statutes, the language of which in defining bankers is identical with section 2.

The test question as to the liability of a company or firm as bankers, as laid down in that case is whether or not, having a place of business, a firm or person is embraced in any one of the three following classes:

First. Do they have a place of business "where credits are

opened (to the general public) by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order?"

Second. Do they have a place of business where money is advanced or loaned on collaterals (stocks, bonds, etc.)?

Third. Do they have a place of business where stocks, bonds, bullion, bills of exchange, or promissory notes are received from another person, for sale, or bills of exchange or promissory notes are received for discount, belonging to that other person? (Vol. 2, Treas. Dec. (1898), No. 20349.)

Bankers, as well as all other special-tax payers, must be included in Record No. 10, kept by collectors for public inspection under section 3240, Revised Statutes; but nothing is required to be stated in the record but the name of the special-tax payer, his business, the place of business, and the time of payment of the special tax. (Vol. 2, Treas. Dec. (1898), No. 19969.)

Loaning money on the personal notes of the borrowers, without collateral security, is not the business of banking contemplated by the statute. (Vol. 2, Treas. Dec. (1898), No. 20264.)

When the charter of a savings bank (or other corporate bank) is surrendered, and the same persons who are officers and stockholders thereof carry on a private banking business, a new special tax is required. (Vol. 2, Treas. Dec. (1898), No. 20336.)

Certain merchants receiving deposits from grain buyers and not from the general public do not thereby become bankers within the meaning of the statute. (Vol. 2, Treas. Dec. (1898), No. 20341.)

City merchants who receive on deposit money from country merchants who are their customers, for the convenience of the latter, but not opening such accounts with the public generally, are not regarded as subject to special tax as bankers. (Vol. 2, Treas. Dec. (1898), No. 20342.)

The receiving of employees' deposits on interest does not involve a company or firm in special-tax liability as bankers. (Vol. 2, Treas. Dec. (1898), No. 20343.)

Merchants do not bring themselves within the definition of bankers by reason of selling their own drafts to their customers; they are not, on this account, required to pay special tax as bankers. (Vol. 2, Treas. Dec. (1898), No. 20365.)

In the case of a bank with branches, a special tax is required of each branch, the special tax being due as to each place where the business of banking is carried on. (§ 3235 Rev. Stat., 1st clause; Vol. 2, Treas. Dec. (1898), No. 20397.)

If two or more bankers, each of whom has paid a special tax, consolidate their business, the consolidated banking firm must pay a new special tax from the date of the consolidation. But in neither case are the capital and surplus of the old (defunct) firm to be considered in reckoning the special tax of the new firm. (Vol. 2, Treas. Dec. (1898), No. 20419.)

Bank's special tax—Change of name.—Where a banking firm (not a corporation) changes its name, without any change in its membership, special tax is not required to be paid again on account of such change. (Vol. 2, Treas. Dec. (1899), No. 20786.)

Opinion of Attorney-General on undivided profits. (Vol. 1, Treas. Dec. (1899), No. 20681.)

Undivided profits, when they are set apart by formal action of the board of directors of a bank, or by any officer of the bank authorized thereunto, and used in the business of banking, must be included with the capital and surplus in the return on which the amount of special tax to be paid is to be estimated. (Vol. 1, Treas. Dec. (1899), No. 21224.)

Explanation of revised Form No. 457, with reference to the clause relating to undivided profits. (Vol. 1, Treas. Dec. (1899), No. 21284.)

(a) Private banks having no capital stock are subject to tax as bankers.

(b) In computing special tax of banks whose capital exceeds \$25,000, if excess is less than \$1,000, it is not to be considered.

(c) In estimating the amount of special tax based upon capital and surplus, the amount invested in United States bonds is not to be deducted.

(d) The amount invested in a bank building is not to be deducted.

(e) A bank in liquidation, doing no business except collecting and dividing assets in closing, is not required to pay special tax.

(f) A bank engaged in business in the month of July must pay special tax for the entire year, beginning July 1.

(g) A trust company is liable as a banker if it comes within any one of the three clauses of definition in above section.

(h) Borrowed capital must be taken into account when estimating amount of special tax.

(i) It is not the subscribed capital, but the capital actually employed during the preceding fiscal year, that is to be taken as the basis for estimating the special tax.

(From Circular No. 508, August 8, 1898; Vol. 2, Treas. Dec., No. 19843.)

Two. Brokers shall pay fifty dollars. Every person, firm, or company, whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for themselves or others, shall be regarded as a broker: *Provided*, That any person having paid the special tax as a banker shall not be required to pay the special tax as a broker.

Brokers.

Bankers not to pay tax as brokers.

(a) The loaning of money for oneself or for others, on commission, does not subject the lender to special tax as a broker; but if a person makes it a business to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for himself or others, he is required to pay the tax. "It is only when making sales and purchases is his business, his trade, his profession, his means of getting his living, or making his fortune, that he becomes a broker within the meaning of the statute." (*Warren et al. v. Shook*, 91 U. S., 704.)

(b) Persons or firms acting as agents for parties loaning money upon promissory notes, secured by mortgages, are not brokers.

(c) A lawyer can make investments for clients without being liable, unless he does it to such an extent that it can be called a "business."

(d) Loan and mortgage companies not liable for loaning money on notes or bonds secured by mortgage or trust deed on real estate. If they purchase notes, bonds, or other securities, they become liable as brokers.

(e) A person engaged in the business of placing loans secured by notes and mortgages upon real estate, acting simply as agent, receiving a commission for his services in obtaining the application for the loan and attending to the execution of the papers, is not a broker.

(f) A person engaged in the business of selling real estate, acting as the agent of the owner in finding purchasers and receiving a commission for his services, is not a broker.

(g) When persons negotiate purchases or sales of promissory notes, if these are only occasional acts and do not constitute their regular business, they are not brokers within the meaning of the act.

(h) Bucket-shop proprietors giving memorandum of transactions are required to pay special tax as brokers.

(i) The principal's special-tax stamp for his place of business in another city covers the transactions only at that place of business, and can not cover the business done elsewhere at a branch office.

(j) Broker's tax is not required to be paid at branch offices where a clerk is employed, whose sole duty is to receive orders and transmit them by wire to the head of the office. The mere receipt and transmission by clerks of orders is not regarded as carrying on the business of a broker.

(From Circular No. 508, Aug. 8, 1898; Vol. 2, Treas. Dec., No. 19843.)

Special tax must be paid for every branch office where the employee in charge not only receives and transmits orders with

the money to the main office, but also receives from the main office moneys for disbursement to customers, or keeps accounts with the customers at the branch office, or does other business with relation to the transactions of brokers at such branch office. Separate special tax must be paid and a separate stamp taken out for every "bucket shop," whether such office is called a branch office or a main office. (Vol. 2, Treas. Dec. (1898), No. 20374.)

It is the language of the statute, and not the ordinary and usual meaning of the word "broker," which must govern in determining who is a broker required to pay a special tax. (Vol. 1, Treas. Dec. (1899), No. 20549.)

While a mining syndicate, or other association, issuing certificates of stock in a company organized by it is not required to pay a special tax as a broker therefor, a manager or other person employed by it to sell such certificates on commission is a broker and required to pay special tax. (Vol. 1, Treas. Dec. (1899), No. 20637.)

An express or railway agent doing business for his principals only, not a broker. (Vol. 1, Treas. Dec. (1898), No. 20106.)

The advancing or loaning of money by brokers on the collateral security of stocks, if these loans or advances are confined by them strictly to customers who have given them, as brokers, orders for the purchase of stocks, and the collateral is held solely to secure themselves in filling such orders, is not regarded as involving them in special-tax liability as bankers within the meaning of the statute. (Vol. 1, Treas. Dec. (1899), No. 21152.)

Transactions which do not constitute the business of a broker. (Vol. 2, Treas. Dec. (1898), Decisions Nos. 19755, 19872, 19885, 19894, 19937, 19940, 20026, 20262, 20269, and 20374.)

Bills of exchange, bonds for the payment of money, and promissory notes are in the popular acceptance of the term "securities" for money. (Jennings v. Davis, 31 Conn., 139.)

Securities: "Evidence of indebtedness." "Written assurance for the return or payment of money." (Anderson's Dictionary of Law.)

Proprietors of bucket shops who issue memoranda of their transactions in stocks and in cotton, grain, etc., even though they sell only "futures," are required to pay special tax both as brokers and as commercial brokers. (Vol. 2, Treas. Dec. (1899), No. 21607.)

Loan and mortgage companies are not liable for special tax as brokers unless they engage in the sale of the securities on which they make loans. When they engage in such sales they become brokers, and are required to pay special tax accordingly. (Vol. 2, Treas. Dec. (1899), No. 21620.)

Persons engaged in the business of buying fee bills of witnesses liable as brokers. (Vol. 2, Treas. Dec. (1899), No. 21647.)

An express company engaged in the business of buying or selling foreign money or bills of exchange is required to pay special tax as a broker. (Vol. 2, Treas. Dec. (1899), No. 21709.)

Pawnbroker.

Three. Pawnbrokers shall pay twenty dollars. Every person, firm, or company whose business or occupation it is to take or receive, by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or any kind of personal property whatever, as security for the repayment of money loaned thereon, shall be deemed a pawnbroker.

A person is not required to pay a special tax as a pawnbroker for rare or occasional acts, which can not be regarded as his business or occupation. (Circular No. 508, Aug. 8, 1898; Vol. 2, Treas. Dec. (1898), No. 19843.)

Commercial brokers.

Four. Commercial brokers shall pay twenty dollars. Every person, firm or company whose business it is as a broker to negotiate sales or purchases of goods, wares, produce, or merchandise, or to negotiate freights and other

business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels, shall be regarded as a commercial broker under this Act.

(a) Commercial brokers are those persons only who, without having in their possession goods, wares, or merchandise, negotiate sales or purchases thereof on commission. (Vol. 2, Treas. Dec. (1898), No. 20416.)

(b) Commission merchants who receive goods in possession to sell for others are not commercial brokers. The difference between a factor or commission merchant and a broker is that a factor may buy and sell in his own name, and has the goods in his possession; while a broker, as such, can not ordinarily buy or sell in his own name, and has no possession of the goods sold. (Slack v. Tucker, 23 Wall., 321.)

(c) Cattle brokers, who receive and sell cattle on commission, are not required to pay special tax as commercial brokers.

(d) A person who is employed by certain firms to solicit and receive orders, on commission, for their goods, and is bound by his agreement with them to give his entire services to them to the exclusion of other firms or persons, not a commercial broker.

(e) Warehousemen who receive tobacco, cotton, or any other produce or goods on consignment, for sale on commission, are not liable as commercial brokers.

(f) Auctioneers who receive and sell goods at their auction rooms or on the premises of the owners, on commission, are not subject to special tax as commercial brokers.

(g) Drug brokers subject to the special tax.

(h) If cotton buyers have possession of cotton which they sell, they are not liable as commercial brokers; if they have not, and sell on commission, they are liable.

(Circular No. 508, Vol. 2, Treas. Dec. (1898), No. 19843.)

Who are required to pay special tax as commercial brokers. (Vol. 2, Treas. Dec. (1898), Decisions Nos. 19575, 19938, 19966, 20164, 20167, and 20168.)

Transactions for which commercial brokers' special tax is not required to be paid. (Vol. 2, Treas. Dec. (1898), Decisions Nos. 19766, 19884, 20117, 20189, 20198, 20272, and 20295.)

Definition of commercial broker. Settled ruling modifying prior rulings. (Vol. 2, Treas. Dec. (1898), No. 20417.)

Decision of Comptroller Tracewell. VI Comp. Dec., 545.

Five. Custom-house brokers shall pay ten dollars. Every person, firm, or company whose occupation it is, as the agent of others, to arrange entries and other custom-house papers, or transact business at any port of entry relating to the importation or exportation of goods, wares, or merchandise, shall be regarded as a custom-house broker. Custom-house brokers.

If the complete business of custom-house brokers is transacted by parties at offices at different ports of one district, a separate and distinct special tax must be paid for each of their offices, under the provisions of section 3235, Revised Statutes, p. 114. (Circular No. 508, Aug. 8, 1898; Vol. 2, Treas. Dec., No. 19843.)

Who are required to pay special tax as custom-house brokers. Vol. 2, Treas. Dec. (1898), Decisions Nos. 19576, 20033, 20206, and 20321.

Transactions for which custom-house brokers' special tax is not required to be paid. (Vol. 2, Treas. Dec. (1898), No. 20106.)

Six. Proprietors of theaters, museums, and concert halls in cities having more than twenty-five thousand population as shown by the last preceding United States census, shall pay one hundred dollars. Every edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance money is received, not including halls rented or used occasionally for Theaters, museums, etc.

Liability of
lessee.

concerts or theatrical representations, shall be regarded as a theater: *Provided*, That whenever any such edifice is under lease at the passage of this Act, the tax shall be paid by the lessee, unless otherwise stipulated between the parties to said lease.

(a) Persons are not required to pay special taxes for the mere occasional renting of their hall for public performances to dramatic companies or other persons charging entrance money therefor, but the special tax of \$10 is required to be paid by such persons or companies if they give dramatic performances or the other exhibitions specifically mentioned in paragraph 8, section 2.

(b) Where theaters are entirely closed to performances during the months of July and August, and only open in the month of September, the special tax is to be reckoned from the 1st day of September to the 1st day of July following, at the rate of \$100 for the year beginning July 1. (Circular No. 508, Aug. 8, 1898; Vol. 2, Treas. Dec., No. 19843.)

Special tax ruling on theaters and theatrical performances. (Vol. 2, Treas. Dec. (1898), Decisions Nos. 19799, 19828, 19891, 19939, 20025, and 20396.)

Circuses.

Seven. The proprietor or proprietors of circuses shall pay one hundred dollars. Every building, space, tent, or area where feats of horsemanship or acrobatic sports or theatrical performances are exhibited shall be regarded as a circus: *Provided*, That no special tax paid in one State, Territory, or the District of Columbia shall exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be imposed for exhibitions within any one State, Territory, or District.

(a) Mere tests of speed of horses in racing are not regarded as "feats of horsemanship" within the meaning of this paragraph.

(b) When a circus is exhibiting in any State in the month of July, special tax is required to be paid for the year beginning July 1. If in the following month the circus goes into another State, the special tax at the rate of \$100 for the year is to be reckoned from the 1st day of August to the 1st day of July following, and a separate special-tax stamp must be taken out for that State, and so on. (Circular No. 508, Aug. 8, 1898; Vol. 2, Treas. Dec., No. 19843.)

Other exhibi-
tions or shows
for money.

Eight. Proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay ten dollars: *Provided*, That a special tax paid in one State, Territory, or the District of Columbia shall not exempt exhibitions from the tax in another State, Territory, or the District of Columbia, and but one special tax shall be required for exhibitions within any one State, Territory, or the District of Columbia.

(a) The "theatrical performances" contemplated by this paragraph are only those which are given in connection with a circus. A theatrical company merely playing dramas in towns of 25,000 inhabitants (as shown by the last census) or less, or in buildings whose proprietors do not hold the \$100 special-tax stamp, is required to pay special tax under this paragraph, viz, \$10 for each State for the special-tax year, if the liability begins in the month of July, and at that rate when the liability begins in any other month than July.

(b) Agricultural associations are required to pay a special tax at rate of \$10 for exhibitions, including horse racing.

(c) Exhibitions and shows given on fair grounds, but not

under management of the fair association holding special-tax stamp, are required to pay separate special tax.

(d) A lecturer using a stereopticon to illustrate his lectures, and charging an admission fee, is liable to the special tax as giving a public exhibition or show for money.

(e) If an exhibition is given in more than one State, the law requires payment of special tax for every such State.

(f) The ordinary church or Sunday-school entertainment, without any hired performers, does not come under the head of public exhibitions or shows for money contemplated by the law.

(g) Amateur theatrical exhibitions, either in private houses or licensed public halls, for church or charitable benefits, or for payment of expenses incurred in giving the exhibition and not for pecuniary profit of the performers or the manager, are not such performances as are subject to tax.

Amateur clubs or local organizations giving exhibitions, even though they charge an admission price, are not required to pay special tax therefor if the proceeds are not for the pecuniary profit of the clubs or associations, but are devoted to some charitable or public object and payment of expenses. (Vol. 1, Treas. Dec. (1899) No. 20840.)

(h) Concert gardens where no admission fee is charged, but where beer and other drinks are sold and shows or stage entertainments are given, are within the meaning of this paragraph, and the special tax of \$10 must be paid therefor.

(From Circular No. 508, Aug. 8, 1898; Vol. 2, Treas. Dec. No. 19843.)

Exhibitions and shows for which special tax is *required* to be paid. (Vol. 2, Treas. Dec. (1898), Decisions Nos. 19749, traveling shows; 19792, kinetoscope; 19826-19830, medicine vender's show; 19873, horse races; 19968, exhibition at park or gardens; 19976, exhibition or show in a saloon; 20121, nickel-in-slot machine, liable under certain conditions; 20190, exhibitions by an athletic association; 20261, phonograph parlor; 20270, concert hall; 20271, fair associations.)

Entertainments for which special tax is *not required* to be paid. (Vol. 2, Treas. Dec. (1898), Decisions Nos. 19751, church entertainments; 19752, amateur theatricals; 19941, halls; 19977, lecturers or elocutionists; 20029, circus performances at county fairs; 20115, merry-go-round; 20123, illustrated lectures (educational association exclusively); 20124, harvest show; 20165, fortune telling; 20228, football, baseball, etc.; 20242, theatrical entertainment for benefit of fire department; 20273, bands in city parks; 20314, pianoforte lecture recital; 20315, lectures on chemistry and physics; 20319, store show (monkeys); 20337, university exhibitions; 20367, fair or entertainment by fraternal organizations (sick benefit.)

Special tax is not required to be paid by proprietors of restaurants or cafés for employing bands of music or orchestras during meal hours for the benefit of their patrons, no admission price being charged and no performance or exhibition being given in connection therewith. Former rulings tending to a different conclusion modified. (Vol. 2, Treas. Dec. (1899), No. 21522.)

An entertainment given by a railway company, to which no admission price is charged, is not regarded as an exhibition or show for money. (Vol. 2, Treas. Dec. (1899), No. 21559.)

Special tax not required for bands of music playing in saloons to which no price of admission is charged, and where persons visiting such places are not under any obligation to buy. (Vol. 2, Treas. Dec. (1899), No. 21636.)

In the absence of an express statutory provision exempting county fair associations from special tax for fairs given by them, it is held that the tax must be paid under the eighth paragraph. (Vol. 2, Treas. Dec. (1899), No. 21665.)

Nine. Proprietors of bowling alleys and billiard rooms shall pay five dollars for each alley or table. Every build-
Bowling alley and billiard room.

ing or place where bowls are thrown or where games of billiards or pool are played, and that are open to the public with or without price, shall be regarded as a bowling alley or a billiard room, respectively.

Social clubs open only to members are not required to pay special tax on billiard tables, but if liquor is sold to members they are liable to special tax as retail liquor dealers. (Circular No. 508, Aug. 8, 1898; Vol. 2, Treas. Dec., No. 18843.)

Club not required to pay special tax on its billiard tables. (Vol. 2, Treas. Dec. (1898), No. 19743.)

A person for the time being in the possession and control of a billiard table in a place or building open to the public is prima facie the proprietor of a billiard room and liable to pay the special tax therefor, even if the general property and ultimate control of the table or place, or either of them, be in someone else. (United States v. Howard, 13 Int. Rev. Rec., 118).

Special-tax stamp to be issued for each bowling alley, pool, or billiard table. (Vol. 2, Treas. Dec. (1898), No. 19610.)

Bagatelle table not liable to special tax. (Vol. 2, Treas. Dec. (1898), No. 20102.)

Tivoli table not liable to special tax. (Vol. 2, Treas. Dec. (1898), No. 20126.)

Bowling alley at Sunday-school picnics or at colleges, special tax not required. (Vol. 2, Treas. Dec. (1898), Nos. 19890-20021.)

When a person who has taken out a special-tax stamp for a bowling alley closes this alley and thereafter opens another to the public, the stamp may be transferred to the latter bowling alley under the provisions of section 3241, Revised Statutes, if it remains in his ownership and control. (Vol. 2, Treas. Dec. (1899), No. 21495.)

In every building or place where bowls are thrown, each division or track is a separate alley, for which the special tax of \$5 must be paid. (Vol. 2, Treas. Dec. (1899), No. 21606.)

SEC. 4 of the act of June 13, 1898 (30 Stat., 448). That from and after July first, eighteen hundred and ninety-eight, special taxes on tobacco dealers and manufacturers shall be and hereby are imposed annually as follows, the amount of such annual taxes to be computed in all cases on the basis of the annual sales for the preceding fiscal year:

Dealers in leaf tobacco.

Dealers in leaf tobacco whose annual sales do not exceed fifty thousand pounds shall each pay six dollars. Dealers in leaf tobacco whose annual sales exceed fifty thousand and do not exceed one hundred thousand pounds shall pay twelve dollars, and if their annual sales exceed one hundred thousand pounds shall pay twenty-four dollars.

Dealers in tobacco.

Dealers in tobacco whose annual sales exceed fifty thousand pounds shall each pay twelve dollars.

Definition of.

Every person whose business it is to sell, or offer for sale, manufactured tobacco, snuff, or cigars shall be regarded as a dealer in tobacco: *Provided*, That no manufacturer of tobacco, snuff, or cigars shall be required to pay a special tax as dealer in manufactured tobacco and cigars for selling his own products at the place of manufacture.

Exception.

Manufacturers of tobacco.

Manufacturers of tobacco whose annual sales do not exceed fifty thousand pounds shall each pay six dollars.

Manufacturers of tobacco whose annual sales exceed fifty thousand and do not exceed one hundred thousand pounds shall each pay twelve dollars.

Manufacturers of tobacco whose annual sales exceed one hundred thousand pounds shall each pay twenty-four dollars.

Manufacturers of cigars whose annual sales do not exceed one hundred thousand cigars shall each pay six dollars. Manufacturers of cigars.

Manufacturers of cigars whose annual sales exceed one hundred thousand and do not exceed two hundred thousand cigars shall each pay twelve dollars.

Manufacturers of cigars whose annual sales exceed two hundred thousand cigars shall each pay twenty-four dollars.

And every person who carries on any business or occupation for which special taxes are imposed by this Act, without having paid the special tax herein provided, shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court. Penalty.

Definition of dealers in leaf tobacco, p. 128; of manufacturers of tobacco, p. 128; of manufacturers of cigars, p. 129.

A manufacturer of tobacco or cigar can not sell at retail at place of manufacture. (16 Op. Atty. Gen., 89; 24 Int. Rev. Rec., 227; *Crisp v. Proud*, 24 *ibid.*, 340; *Ludloff v. United States*, 108 U. S., 176; 29 Int. Rev. Rec., 125.)

Special-tax stamps for sales of tobacco by persons traveling from place to place. (29 Int. Rev. Rec., 305.)

Special tax, dealers in leaf tobacco. (Vol. 2, Treas. Dec. (1898), Decisions Nos. 19619, 19801, 19822, 19876, 19877 and 19962.)

Special tax liability of a person buying leaf tobacco exclusively for export by himself. (Vol. 3, Treas. Dec. (1900), Int. Rev., No. 28.)

Manufacturers selling their own products at place of manufacture not required to pay special tax as tobacco dealers. (Vol. 2, Treas. Dec. (1898), No. 19765.)

Quasi manufacturers of tobacco and dealers in stems, refuse, scraps, etc., of tobacco are required to register and pay the minimum tax of \$6 imposed on manufacturers of tobacco. (Vol. 2, Treas. Dec. (1898), No. 19844.)

Dealers in leaf tobacco not permitted to manufacture fertilizers, insecticide, or sheep dip from leaf tobacco or tobacco material, for the purpose of selling their products to the general trade. (Vol. 1, Treas. Dec. (1899), No. 20584.)

Sale of leaf tobacco in quantities less than a hogshead, case, or bale. (Int. Rev. Circular No. 523, Feb. 10, 1899; Vol. 1, Treas. Dec., No. 20750.)

SEC. 36. *Act of June 13, 1898 (30 Stat., 448).* That every person, firm, or corporation, before engaging in the business of making, packing, or repacking mixed flour, shall pay a special tax at the rate of twelve dollars per annum, the same to be paid and posted in accordance with the provisions of sections thirty-two hundred and forty-two and thirty-two hundred and thirty-nine of the Revised Statutes, and subject to the fines and penalties therein imposed for any violation thereof. Manufacturers and packers of mixed flour.
Penalty.

CHAPTER FOUR.

DISTILLED SPIRITS.

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- 3248. Distilled spirits, definition of.
- 3249. Standard of proof spirits; instruments, etc.
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- 3318 (amended). Rectifiers' and wholesale dealers' books and transcripts; penalties.
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- [3330b.] Act of December 20, 1879; allowance for loss during transportation.
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- Act October 1, 1890, as amended by act of August 28, 1894. Grape brandy used for the fortification of wine, wine spirits and pure sweet wine defined.
- * Withdrawal of wine spirits from special bonded warehouses.
- Act of March 3, 1897. Bottling of distilled spirits in bond.

SEC. 3247. Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller. Distiller. definition of.

See section 3282 as to vinegar makers, p. 170.

To make one in possession of a still a distiller because he

keeps mash, wort, or wash, the mash, wort, or wash must be such as will produce spirits on distillation. (United States v. House and Lot No. 3 Abattoir Place; 25 Int. Rev. Rec., 319.)

Special tax on distillere repealed, act of June 6, 1872.

A corporation may carry on the business of distilling. Also, meaning of the word "person" in this chapter. (15 Op. Atty. Gen., 230; 23 Int. Rev. Rec., 141.)

Distilled spirits, definition of.

SEC. 3248. Distilled spirits, spirits, alcohol, and alcoholic spirit, within the true intent and meaning of this act, is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar; including all dilutions and mixtures of this substance; and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

Under the internal-revenue laws the tax on spirits attaches as soon as they come into existence, and must be paid by the manufacturer, even in case of their destruction, unless the circumstances on which he relies for exemption come within the particular description in some one of the remedial statutes. (Greenbrier Distillery Company v. Johnson, 88 Fed. Rep., 638.)

Standard of proof spirits; prevention of frauds.

SEC. 3249. Proof spirit shall be held to be that alcoholic liquor which contains one-half its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten thousandths (.7939) at sixty degrees Fahrenheit. And for the prevention and detection of frauds by distillers of spirits, the Commissioner of Internal Revenue may prescribe for use such hydrometers, saccharometers, weighing and gauging instruments, or other means for ascertaining the quantity, gravity, and producing capacity of any mash, wort, or beer used, or to be used, in the production of distilled spirits, and the strength and quantity of spirits subject to tax, as he may deem necessary; and he may prescribe rules and regulations to secure a uniform and correct system of inspection, weighing, marking, and gauging of spirits.

Meters. (Tice v. United States, 99 U. S., 286; Sausser v. United States, 9 Ct. Clms., 338; 11 *ibid.*, 538; Finch v. United States, 12 Ct. Clms., 364; 102 U. S. (12 Otto), 269; 26 Int. Rev. Rec., 410.)

By the act of June 6, 1872 (17 Stat., 239), all the provisions of the act of July 20, 1868, touching meters were repealed.

By the terms of Special No. 180, issued June 16, 1877 (Gaugers' Manual, 1900), gaugers are directed to decline to gauge, brand, mark, or stamp any distiller's or rectifier's package when the wantage exceeds one-half wine gallon in a package of less than 63 gallons' capacity when the temperature of the spirits is 50° Fahr. or above; or when the wantage exceeds 1 gallon on the same quantity with temperature below 50° Fahr.; or, when the capacity ranges from 63 to 126 gallons at a temperature of 50° Fahr. or above, the wantage is greater than 1 gallon; or with same quantity at a temperature less than 50° Fahr. and wantage greater than 1½ gallons; or capacity 126 gallons and upward with a temperature of 50° Fahr. or more the wantage is greater than 2 gallons; or same capacity, temperature less than 50° Fahr., wantage greater than 3 gallons. The exception is when a final package is insufficiently filled because the distillery cis-

terns or rectifying vats are exhausted, and then a special report on Form 59 or 59½ is required. (Gaugers' Manual, 1900; 23 Int. Rev. Rec., 205.)

Under the modification of Special No. 180, gaugers are directed not to refuse to gauge brandy at fruit distilleries of not more than 100 proof gallons' daily capacity by reason of large actual wantage. (Gaugers' Manual, 1900; 23 Int. Rev. Rec., 317.)

On the 1st of May, 1892, the method of gauging of spirits by rod, theretofore used, was changed to a weighing system, by which the number of wine gallons contents is determined by the weight of the package. Weighing beams are furnished for the use of distilleries and rectifying houses, and their use made obligatory, except at fruit distilleries of a production of less than 10,000 proof gallons during the season, and at rectifying houses rectifying less than 5,000 proof gallons of spirits annually. (Gaugers' Weighing Manual (1895) and Circular No. 529 (April 20, 1899), Vol. I, Treas. Dec. No. 21047.)

Weighing spirits: Commissioner's Annual Report (1892). (38 Int. Rev. Rec., 13.)

Circular No. 175 relates to the price of the improved rod. (23 Int. Rev. Rec., 405.) Circular 338, Nov. 19, 1889, relates to the reduction in price of the standard gauging rod. (35 Int. Rev. Rec., 365.) Gaugers' Manual, 1900.

Alexander's improved wantage rod. (Dep. Cir. No. 160. Int. Rev. No. 484, Oct. 2, 1897; 43 Int. Rev. Rec., 386; increased price, Cir. No. 553, Vol. 3, Treas. Dec. (1900) Int. Rev. No. 34.)

Circular No. 218, August 1, 1879, authorizes the outage of packages of less than 63 gallons' capacity to be 1 gallon where Corey's apparatus for aging whisky and other spirits in distillery warehouses is used, and modifies Circular No. 180 accordingly. (25 Int. Rev. Rec., 245.)

See Gaugers' Manual, 1900, for rule applicable to all apparatus for aging whisky, which has been approved by the Commissioner.

One of the regulations established under the authority of section 3249 was that, "Whenever any rectifier proposes to empty any spirits for the purpose of rectifying, purifying, refining, redistilling, or compounding the same, he will file with the collector a notice or statement giving the number of casks or packages, the serial number of each, the number of wine and proof gallons in each, the kind of stamps and serial numbers of each, the particular name of such spirits as known to the trade, the proof, by whom produced, the district where produced, by whom inspected, and the date of inspection."

It was claimed that the regulation in question was unauthorized by the statute. The opinion of the United States Supreme Court in Thacher, claimant, etc., v. United States, says: "But we see no just ground for such a proposition. The internal-revenue law is very specific in the details of that which is necessary to prevent fraud, especially in regard to the tax on whisky and tobacco, and it was still found necessary to authorize the bureau which had charge of the collection of that tax to prescribe regulations for conducting the business of making and selling whisky, and to adopt forms of reports in the information it must receive from the officers engaged in collecting the tax and the parties who should pay the tax. The rule in question seems to be a reasonable one and within the purview of the power conferred." (Thomas Thacher, claimant of 102 packages of distilled spirits, plaintiff in error, v. The United States, 103 U. S. 679; 27 Int. Rev. Rec., 144.) The substance of this regulation is now included in the statutes. [Sec. 3317a, p. 197.]

A new edition of the Internal-Revenue Gaugers' Manual, embracing regulations and instructions and tables prescribed by the Commissioner of Internal Revenue by virtue of section 3249, R. S., has been issued (1900).

SEC. 3250. In all sales of spirits a gallon shall be held to be a gallon of proof spirit, according to the standard prescribed in the preceding section, set forth and declared for

Gallon as used in sales, definition of.

the inspection and gauging of spirits throughout the United States.

In 1830, May 29, the Senate directed a new comparison to be made of the weights and measures in use in the various custom-houses.

This work was intrusted to Prof. Haessler, Superintendent of the Coast Survey. He found much discrepancy to exist. He procured accurate copies of the British standards, and upon his recommendations these were adopted as standards by the Treasury Department in 1832, and copies of them were then furnished to all the custom-houses.

To secure uniformity throughout the country, Congress, by a joint resolution, June 14, 1836, directed that complete sets of these adopted standards be furnished by the Weights and Measure Bureau (which by law still remains under the charge of the Superintendent of the Coast Survey) to the various States.

The standard English gallon, of which ours is an exact copy, is defined as containing 58,372.2 grains distilled water at its maximum density, weighed in air of the temperature of 62° F. and barometric pressure of 30 inches. (Extract from letter dated January 18, 1886, of F. M. Thorn, Superintendent of the U. S. Coast and Geodetic Survey, to Hon. C. S. Fairchild, Assistant Secretary of the Treasury.)

See also definition of gallon, as relates to fermented liquors, in section 21, act of March 1, 1879 [§ 3339a, p. 227].)

Tax on distilled
spirits.
Repealed by
sec. 48, act of
Aug. 28, 1894.

SEC. 3251, as amended by section 1, act of March 3, 1875 (18 Stat., 339).

[There shall be levied and collected on all distilled spirits produced in the United States on which the tax prescribed by law has not been paid, a tax of ninety cents on each proof gallon, or wine gallon when below proof, to be paid by the distiller, owner, or person having possession thereof before removal from the distillery bonded warehouse: *Provided*, That distilled spirits lawfully deposited in a distillery bonded warehouse prior to the first day of August, eighteen hundred and seventy-two, may be withdrawn on payment of the taxes thereon at the rate, within the time, and in the manner provided by law at the time of such deposit.]

Obsolete.

The tax on such spirits shall be collected on the whole number of gauge or wine gallons when below proof, and shall be increased in proportion for any greater strength than the strength of proof spirit, as defined in this title; [and any fractional part of a gallon amounting to one-half gallon or over in a cask or package shall be taxed as a gallon, and any fractional part of a gallon less than one-half gallon in any cask or package shall be exempt from tax.] Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom, and the tax shall be a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the lot or tract of land whereon the said distillery is situated, and on any building thereon from the time said spirits are in existence as such until the said tax is paid.

Lien.

Part in brackets repealed by act of Aug. 28, 1894. Fractional parts of a gallon. [Sec. 3251a.]

The stockholders of a corporation engaged in operating a distillery are "persons interested in the use of the distillery," within the meaning of section 3251, which declares that every proprietor and possessor, "and every person in any manner

interested in the use of" a distillery, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

(United States v. Wolters, *et al.*, (1891) S. D. Cal., 46 Fed. Rep., 509. United States v. Howard, 11 Int. Rev. Rec., 119.)

[3251a.] Sec. 48, act of August 28, 1894 (28 Stat., 509). That on and after the passage of this act there shall be levied and collected on all distilled spirits in bond at that time, or that have been or that may be then or thereafter produced in the United States, on which the tax is not paid before that day, a tax of one dollar and ten cents on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon: *Provided*, That in computing the tax on any package of spirits all fractional parts of a gallon, less than one tenth, shall be excluded.

Tax on distilled spirits.

Fractional gallons.

Stamps.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe and furnish suitable stamps denoting the payment of the internal-revenue tax imposed by this section; and until such stamps are prepared and furnished, the stamps now used to denote the payment of the internal-revenue tax on distilled spirits shall be affixed to all packages containing distilled spirits on which the tax imposed by this section is paid; and the Commissioner of Internal Revenue shall, by assessment or otherwise, cause to be collected the tax on any fractional gallon contained in each of such packages as ascertained by the original gauge, or regauge when made, before or at the time of removal of such packages from warehouse or other place of storage; and all provisions of existing laws relating to stamps denoting the payment of internal-revenue tax on distilled spirits, so far as applicable, are hereby extended to the stamps provided for in this section.

Collection of the tax.

Laws applicable.

That the tax herein imposed shall be paid by the distiller of the spirits, on or before their removal from the distillery or place of storage, except in case the removal therefrom without payment of tax is authorized by law; and (upon spirits lawfully deposited in any distillery warehouse, or other bonded warehouse, established under internal-revenue laws) within eight years from the date of the original entry for deposit in any distillery warehouse, or from the date of original gauge of fruit brandy deposited in special-bonded warehouse, except in case of withdrawal therefrom without payment of tax as authorized by law.

Tax to be paid by the distiller within eight years.

DISTILLED SPIRITS.

Rates of tax on spirits under the different laws which have been in force.

	Tax per gal- lon.	Acts impee- ing tax.	Acts repeal- ing tax.	Length of time rates were in force.
				<i>Months.</i>
Spirits distilled from whatever mate- rials	\$0. 20	July 1, 1862	Mar. 7, 1864	18
Do .....	. 60	Mar. 7, 1864	June 30, 1864	4
Spirits distilled from whatever mate- rials, except grapes	1. 50	June 30, 1864	Dec. 22, 1864	6
Spirits distilled from whatever mate- rials, except grapes, to Apr. 1, 1865, and from whatever materials, except apples, grapes, and peaches, after Apr. 1, 1865	2. 00	Dec. 22, 1864	July 20, 1868	43
Spirits distilled from grapes .....	. 25	June 30, 1864	Mar. 3, 1865	9
Do .....	. 50	Mar. 3, 1865	July 13, 1866	17
Spirits distilled from apples or peaches ..	1. 50	.....do .....	.....do	17
Spirits distilled from apples, grapes, or peaches	2. 00	July 13, 1866	Mar. 2, 1867	6
Spirits distilled from apples or peaches ..	2. 00	Mar. 2, 1867	July 20, 1868	17
Spirits distilled from grapes	1. 00	.....do .....	.....do	17
Spirits distilled from whatever mate- rials .....	. 50	July 20, 1868	June 6, 1872	43
Do .....	. 70	June 6, 1872	Mar. 3, 1875	31
Do .....	. 90	Mar. 3, 1875	Aug. 28, 1894	234
Do	1. 10	Aug. 28, 1894		.....

The act of July 1, 1862, went into operation September 1, 1862.

The act of June 30, 1864, provided that a tax of \$1.50 per gallon should be levied and collected on all distilled spirits, except brandy distilled from grapes, from July 1, 1864, to February 1, 1865; on and after February 1, 1865, the tax should be \$2 per gallon.

The act of December 22, 1864, provided that the tax of \$2 per gallon should take effect January 1, 1865, instead of February 1, 1865.

So far as the other acts referred to relate to the tax on spirits, they went into operation immediately on their passage, except the following: Act of March 3, 1865, took effect April 1, 1865; act of July 13, 1866, took effect September 1, 1866; act of June 6, 1872, took effect August 1, 1872.

The act of July 20, 1868, made the tax 50 cents per gallon, to be paid by stamps; but there was imposed on the distiller by that act an additional tax on his product of \$4 per barrel of 40 proof gallons, which made the tax really 10 cents per gallon additional, or 60 cents per gallon. There was also a tax on the grain-mashing capacity of the distillery, and a further requirement of reimbursement by the distiller of the sums paid by the Government for gaugers' fees and storekeepers' salaries, altogether amounting to about 7 cents per gallon of the aggregate product of spirits, thus making the whole tax charged upon the distiller about 67 cents per gallon.

By the act of June 6, 1872, taking effect August 1, 1872, the barrel and grain capacity taxes and the reimbursement provision were repealed, and the tax was made 70 cents per gallon, being only an actual addition of about 3 cents per gallon. By the act of March 3, 1875, increase was made to 90 cents per gallon. August 28, 1894, the tax was again increased to \$1.10 per gallon.

Stamps first required in payment of tax on spirits by the act of July 20, 1868 (15 Stat., 125), and went into use November 2, 1868. (Circular of Sept. 17, 1868.)

The act of Congress approved July 20, 1868, imposing a tax on distilled spirits, is not unconstitutional. The tax imposed upon the distiller is in the nature of an excise, and the only limitation upon the power of Congress in the imposition of taxes of this character is that they shall be "uniform throughout the United States." (United States v. Singer, 15 Wall., 111; Same v. Van Buskirk, 15 Wall., 123.)

Theory of Government supervision over distilleries. (*United States v. Parker, Mason & Co. et. al.*, 21 Int. Rev. Rec., 245.)

Persons having interest in distillery liable. (*United States v. Howard*, 11 Int. Rev. Rec., 119.)

Lien can not be divested by transfer of title. (*Milan Distilling Company v. Tillson*, collector, 26 Int. Rev. Rec., 5.)

The soukage of spirits into distiller's packages, not being included in the basis of computation, is not a part of the quantity upon which the tax is levied, and, consequently, when extracted from the empty barrels, it is spirits on which the lawful tax has not been paid, and is subject to taxation. (*Corning & Co. v. Hunter*, collector, U. S. Circuit Court of Appeals (1898); 86 Fed. Rep., 913; Vol. 1, Treas. Dec., p. 522, No. 19191.)

Stockholders in a distilling company individually liable for taxes due from the corporation. (15 Op. Atty. Gen., 559; 23 Int. Rev. Rec., 141.)

Municipal corporations engaged in distilling liable to tax. (*Salt Lake City v. Hollister*, collector, 118 U. S., 256; 32 Int. Rev. Rec., 158.)

Payment of tax on forfeited spirits by the marshal out of proceeds of sale (§ 3458) discharges liability of sureties on distillers' warehousing bond for tax. (*United States v. Ulrici*, 111 U. S., 38; 30 Int. Rev. Rec., 111.)

The laws imposing taxes on distilled spirits are coextensive with jurisdiction of United States. (§ 3448, p. 144.)

Domestic whisky returned from abroad. (26 Int. Rev. Rec., 50; 27 *ibid.*, 333.)

Domestic spirits exported from the United States subject to rate of duty equal to internal-revenue tax upon reimportation of same into this country. (See § 2500.)

Where there is presumptive evidence that it was the intention of the parties to return the spirits to United States, entry under section 2500 not allowed. (35 Int. Rev. Rec., 358.)

[For opinion of Attorney-General as to what constitutes an exportation within contemplation of law see references under § 3330.]

Domestic spirits returned to the United States and *not admitted under section 2500 as reimported spirits* subject to internal-revenue tax on full quantity contained in packages at time of withdrawal from distillery warehouse.

The purchaser of spirits deposited in the distillery warehouse and sold subject to tax takes the property subject to the lien not only of the tax levied pursuant to the report of the distiller, but to any additional tax that may be assessed by the Commissioner under the acts of Congress. (*Hartman v. Bean*, 99 U. S. (9 Otto), 393; 25 Int. Rev. Rec., 141.)

"We find no provision in any part of the internal-revenue laws giving countenance to the idea that a sheriff has the right to enter a bonded warehouse of the United States and seize spirits held therein for Government tax, as the property of the defendant, in an execution in his hands, even though he may offer to pay the tax." (*McCullough v. Large et al.*, 30 Int. Rev. Rec., 166.)

Section 61, act of August 28, 1894, providing for exemption from tax of alcohol to be used in the arts or medicinal compounds, etc., was repealed by the following act of June 3, 1896:

"SEC. 1. That section sixty-one of an act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," which became a law August twenty-eighth, eighteen hundred and ninety-four, be, and the same is hereby, repealed.

"SEC. 2. That a joint select committee is hereby authorized, to consist of three Senators to be appointed by the presiding officer of the Senate, and three Members of the House of Representatives to be appointed by the Speaker of the House, which select committee shall consider all questions relating to the use of alcohol in the manufactures and arts free of tax, and to report their conclusions to Congress on the first Monday in December, eighteen hundred and ninety-six.

"Said joint select committee is authorized to sit, by subcommittee or otherwise, during the recess or session of Congress, at such times and places as they deem advisable; to summon witnesses, administer oaths, print testimony or other information, and to employ such stenographic, clerical, and other assistance as may be necessary, one-half of the expense to be paid from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives."

The grant in the act of August 28, 1894, was the right to a rebate on alcohol used "under regulations to be prescribed by the Secretary of the Treasury." There was no vested right unless the alcohol was used under such regulations. The failure of the Secretary to prescribe regulations will not supply the essential element.

The fact that the Secretary reported to Congress his failure to prescribe regulations and that Congress repealed section 61 of the act may be regarded as legislative construction. (*Dunlap & Co. v. United States*, 33 Ct. Clms., 135.)

The grant was conditional on use, in compliance with regulations to be prescribed, in the absence of which regulations the right did not so vest as to create a cause of action by reason of the unregulated use. (*Dunlap v. United States*, 173 U. S., 65.)

[SEC. 3251b.] *Act of March 3, 1891 (26 Stat., 1050).* *An act making appropriations for the Department of Agriculture.* * * * That any manufacturer of sugar from sorghum may remove from distillery warehouses to factories used solely for the manufacture of such sugar from sorghum distilled spirits in bond free of tax, to be used solely in such manufacture of sugar from sorghum; that all distilled spirits removed as herein authorized shall be of an alcoholic strength of not less than one hundred and sixty per centum proof, and may be removed, stored, and used in the manufacture of sugar from sorghum, and when so used may be recovered by redistillation in the sugar factory of such sugar manufacturer under such bonds, rules, and regulations for the protection of the revenue and the accomplishment of the purposes herein expressed as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe.

Withdrawal free of tax of spirits used in the manufacture of sugar from sorghum.

Penalty.

Any person who removes or uses distilled spirits in violation of this provision, as [or] the regulations issued pursuant thereof, shall, on conviction thereof, be fined not less than one thousand dollars nor more than five thousand dollars for each offense, and the spirits and the premises on which such spirits are used shall be forfeited to the United States. * * *

Adding substances to create fictitious proof; penalty.

SEC. 3252. Every person who adds or causes to be added any ingredient or substance to any distilled spirits before the tax is paid thereon, for the purpose of creating a fictitious proof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each cask or package so adulterated, and imprisoned not less than three months nor more than two years; and every such cask or package, with its contents, shall be forfeited to the United States.

Tax on spirits removed without deposit in warehouse; assessment.

SEC. 3253. The tax upon any distilled spirits removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall, at any time, when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who

shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

This section also applies to fruit distillers who sell spirits without payment of tax.

(See also § 8, act of March 3, 1877, providing similar remedy in certain cases as to brandy made from apples, peaches, or grapes, page 213.)

The United States Supreme Court held that "a municipal corporation can not, any more than any other corporation or private person, escape the taxes due on its property, whether acquired legally or illegally, and it can not make its want of legal authority to engage in a particular transaction or business a shelter from the taxation imposed by the Government on such business or transaction by whomsoever conducted." (*Salt Lake City v. Hollister*, 118 U. S., 256; 32 Int. Rev. Rec., 158.)

SEC. 3254. All products of distillation, by whatever name known, which contain distilled spirits or alcohol, on which the tax imposed by law has not been paid, shall be considered and taxed as distilled spirits. Products of distillation containing spirits.

SEC. 3255, as amended by act of June 3, 1896 (29 Stat. 195). The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries or prunes from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so. Brandy made from apples, peaches, grapes, etc.

Act of March 3, 1877, relating to the production of grape brandy (special bonded warehouses), p. 210.

Act of October 18, 1888, relating to production of brandy made from apples or peaches, p. 214.

By virtue of the authority contained in section 3255, as amended, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, has exempted distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries or prunes from the following provisions of law, to wit:

From all the provisions of sections 3262, 3263, 3267, 3269, 3271, 3273, 3275, 3279, 3284, 3285, 3294, 3302, 3310, 3318, Revised Statutes, and from portions of the following-named sections, to wit:

So much of section 3259 as requires the distiller to state in his notice the number of mash tubs and fermenting tubs and the cubic contents of each tub; the number of receiving cisterns and the cubic contents of each cistern; the number of hours in which the distiller will ferment each tub of mash or beer; and a particular description of the lot or tract of land on which the distillery is situated. So much of section 3266 as provides that no person shall use any still, boiler, or other vessel for the purpose of distilling, in any shed, yard, or inclosure connected with any dwelling house. From all of sections 3303, 3305, and 3307, except so much thereof as provides for the keeping of a book or books in the manner to be prescribed by the Commissioner of Internal Revenue; the preservation of such book or books for the inspection of revenue officers and the penalties pertaining thereto, and the making of returns: *Provided, however*, That the manner of making such returns shall be as prescribed in these regulations. So much of section 3264 as provides that 45 or 60 gallons of mash or beer brewed or fermented from grain shall represent not less than 1 bushel of grain, and 7 gallons of mash or beer, brewed or fermented from molasses, shall represent not less than 1 gallon of molasses.

From all of the provisions of sections 3287 and 3293, except so much thereof as requires that all distilled spirits shall be drawn into casks and shall be gauged, proved, and marked by a United States gauger, by cutting on the cask containing such spirits, in a manner to be prescribed, the quantity in wine gallons and in proof gallons of the contents of such cask, and the serial number of the package in progressive order.

From so much of section 3295 as provides for the receiving of an order from the collector for the removal of spirits from distillery warehouse, and from so much thereof as requires that the affixing of the tax-paid stamp and the cutting or burning of the serial number of the stamp shall be done by the gauger.

From so much of section 3244 as requires that spirits purified or refined in the original course of manufacture must be by continuous distillation through continuous closed vessels and pipes until the manufacture thereof is complete; and further, from so much of the provisions of said section as would render such distillers liable as rectifiers in consequence of the addition of burnt sugar to their product while on the distillery premises and in the original packages. But the burnt sugar must be added to the brandy in the presence of the United States gauger after the brandy has been gauged and before the tax-paid stamp is affixed.

See also: Internal Revenue Circular, No. 545, permitting, under certain conditions, the sugar to be added to the brandy in bulk. (Vol. 2, Treas. Dec. (1899), No. 21608.)

From so much of section 3309, as amended, as requires that a less number of hours than twenty-four shall be reckoned as a full day in estimating the spirit-producing capacity of a distillery when the number of hours operated during the month is less than twenty-four or exceeds a full day or days by a less number than twenty-four.

From so much of section 3311 as requires the collector, upon receipt of notice from the distiller, to place upon fermenting tubs close-fitting covers for the purpose of reducing the producing capacity of the distillery.

From so much of the provisions of section 62 of the act of August 28, 1894 [§ 3318a], as provides "That he (every distiller) shall be required to keep the book prescribed by section thirty-three hundred and eighteen of the Revised Statutes of the United States, or so much as shall show the date when he sent out any spirits, the serial numbers of the packages containing same, the kind and quality of the spirits in wine gallons and taxable gallons, the serial numbers of the stamps on the packages, and the name and residence of the person to whom sent; and the provisions of section 5 of an act entitled 'An act to amend the laws relating to internal revenue,' approved March fifth, eighteen hundred and seventy-nine, as to transcripts, shall apply to such books. Any failure, by reason of refusal or willful neglect, to furnish the transcript by him shall subject the spirits owned or distilled by him to forfeiture."

Regulations, Series 7, No. 7, Revised, Supplement No. 1, issued June 22, 1896, relative to the distillation of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, or prunes; and Regulations, Series 7, No. 5, revised September 1, 1899.

For regulations as to assessing the tax on "fruit" brandy in default of payment, see Regulations, Series 7, No. 7, Revised, Supplement No. 1, page 15, as modified by Department Circular No. 19, Internal Revenue No. 471, January 30, 1897. (43 Int. Rev. Rec., 61.)

Distilleries having a daily spirit-producing capacity of thirty gallons proof spirits or less; exemptions.

[SEC. 3255a.] Section 5 of the act of March 1, 1879. (20 Stat., 327.)

* * * The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers whose distilleries have a daily spirit-producing capacity of thirty gallons of proof spirits, or less, from such of the provisions of existing law in regard to grain distilleries which require the process of distillation to be carried on through continuous closed vessels and pipes, or which

require the cisterns to be connected with the outlet of the worm or condenser by suitable pipes or other apparatus or which require certain clear spaces about the cisterns and other vessels of the distillery, or which require the distillers to have or furnish a plan of the distillery, as he may deem proper.

Under the authority given by this section distillers whose distilleries have a daily spirit-producing capacity of 30 gallons of proof spirits or less, as estimated and determined by a survey made according to law, are exempted—

(1) From so much of the provisions of section 3263 as require a plan of the distillery to be had or furnished by the distiller;

(2) From so much of the provisions of sections 3267 and 3269 as require that the open or clear spaces above, below, or around the receiving cisterns, wood still, doubler, and worm tanks shall be of any greater extent or dimensions than is necessary to afford a clear, distinct, and uninterrupted view around, above, and beneath each of said vessels or utensils.

SEC. 3256. Whenever any person evades, or attempts to evade, the payment of the tax on any distilled spirits, in any manner whatever, he shall forfeit and pay double the amount of the tax so evaded or attempted to be evaded. Evading tax; penalty.

(See § 3296, p. 184.)

SEC. 3257. Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years. Distiller defrauding or attempting to defraud United States of tax on spirits.
Forfeiture.
Penalty.

See section 3281, p. 167, and citations thereunder. See section 3230, p. 112, as to *nolle prosequi* of prosecutions under section 3257.

It is sufficient in the indictment to allege the offense in the language of the statute where this so defined the act or acts constituting the offense as to give to the defendant information of the nature and cause of the accusation. (*United States v. Staton*, 25 Int. Rev. Rec., 10.)

"In this case it was not necessary, under section 3257, to set forth the particular means by which the claimant defrauded or attempted to defraud the United States of the tax or to specify the particular spirits covered by the tax. * * *

"It was not necessary to aver in the information that the distilled spirits found on the claimant's distillery premises and seized were distilled by him or were the product of his distillery, or that the distillery apparatus was wrongfully used, because section 3257 does not make these facts elements of the causes of forfeiture denounced by it.

"The only necessary elements are that the person shall be engaged in carrying on the business of a distiller, and that he shall defraud or attempt to defraud the United States of the tax on the spirits distilled by him. The forfeiture is to be enforced by a civil suit *in rem* and the fine and imprisonment in a criminal proceeding." (*Coffey v. United States*, 32 Int. Rev. Rec., 39; 116 U. S., 427.)

One who has been fined and imprisoned under section 3257, for illicit distilling, is estopped to claim as his own the distillery and spirits forfeited thereby; and such a conviction is not a bar to the proceeding *in rem* required by section 3453 to declare and perfect the forfeiture. (*United States v. Three Copper Stills, etc.* (1890) 47 Fed. Rep., 495.)

Registry of
stills, etc.

SEC. 3258. Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him duplicate statements, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used; one of which statements shall be retained and preserved by the collector, and the other transmitted by him to the Commissioner of Internal Revenue. Stills and distilling apparatus shall be registered immediately upon their being set up.

Forfeiture.

Every still or distilling apparatus not so registered, together with all personal property in the possession or custody, or under the control of such person, and found in the building, or in any yard or inclosure connected with the building in which the same may be set up, shall be forfeited.

Penalty.

And every person having in his possession or custody, or under his control, any still or distilling apparatus set up which is not so registered, shall pay a penalty of five hundred dollars, and shall be fined not less than one hundred dollars, nor more than one thousand dollars, and imprisoned for not less than one month, nor more than two years.

The requirements of this section apply to all stills "set up," of whatever size, and for whatever purpose intended. (22 Int. Rev. Rec., 397; 36 Int. Rev. Rec., 285.)

Stills used for distillation of brandy from fruit are required to be stamped with a number, as, for example, "2 Ga., 456," the letters and figures to be not less than three-eighths of an inch long. (Series 7, No. 7, Revised February 19, 1895—Supplement No. 1.)

While there is no tax imposed by the internal-revenue laws on oils distilled from herbs, yet stills used in such distillation (if they are such as could be used in the production of the spirits defined by these laws) must, immediately upon being set up, be registered with the collector under section 3258, Revised Statutes. (Vol. 1, Treas. Dec. (1898), No. 19192.)

Notice of intention to carry on
business of distiller or rectifier.

SEC. 3259. Every person engaged in, or intending to be engaged in, the business of a distiller or rectifier, shall give notice in writing, subscribed by him, to the collector of the district wherein such business is to be carried on, stating his name and residence, and, if a company or firm, the name and residence of each member thereof, the name and residence of every person interested or to be interested in the business, the precise place where said business is to be carried on, and whether of distilling or rectifying; and if such business is carried on in a city, the residence and place of business shall be indicated by the name of the street and number of the building. In case of a distiller, the notice shall also state the kind of stills and the cubic contents thereof, the number and kind of boilers, the number of mash-tubs and fermenting-tubs, the cubic contents of each tub, the number of receiving-cisterns, the cubic contents of each cistern, the number of hours in which the distillery will ferment each tub of mash or beer, the estimated quantity

of distilled spirits which the apparatus is capable of distilling every twenty-four hours, a particular description of the lot or tract of land on which the distillery is situated, and of the buildings thereon, including their size, material, and construction; and that said distillery premises are not within six hundred feet, in a direct line, of any premises authorized to be used for rectifying or refining distilled spirits by any process.

In case of a rectifier, the notice shall state the precise place where such business is to be carried on, the name and residence of every person interested or to be interested in the business, the process by which the applicant intends to rectify, purify, or refine distilled spirits, the kind and cubic contents of any still used or to be used for such purpose, the estimated quantity of spirits which can be rectified, purified, or refined every twenty-four hours in such establishment, and that said rectifying establishment is not within six hundred feet, in a direct line, of the premises of any distillery registered for the distillation of spirits.

In case of any change in the location, form, capacity, ownership, agency, superintendency, or in the persons interested in the business of such distillery or rectifying establishment, or in the time of fermenting the mash or beer, notice thereof, in writing, shall be given to the said collector or proper deputy collector of the district within twenty-four hours after such change; and any deputy collector receiving such notice shall immediately transmit the same to the collector of the district. Every notice required by this section shall be in such form, and shall contain such additional particulars, as the Commissioner of Internal Revenue may, from time to time, prescribe.

Every person who fails or refuses to give such notice shall pay a penalty of one thousand dollars, and shall be fined not less than one hundred dollars nor more than two thousand dollars; and every person who gives a false or fraudulent notice shall, in addition to such penalty or fine, be imprisoned not less than six months nor more than two years.

Penalty.

Section 7, act of March 1, 1879, requirement as to rectifier's bond, repealed by section 9, act of May 28, 1880 (21 Stat., 145).

Successions and changes of name or style of distillers. (Int. Rev. Circular No. 524, Vol. 1, Treas. Dec. (1899), No. 20835.)

SEC. 3260, as amended by section 1, act of May 28, 1880 (21 Stat. 145), Every person intending to commence or to continue the business of a distiller shall, on filing with the collector his notice of such intention, and before proceeding with such business, and on the first day of May of each succeeding year, execute a bond in the form prescribed by the Commissioner of Internal Revenue, conditioned that he shall faithfully comply with all the provisions of law relating to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions; and that he shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, to be incumbered by mortgage, judgment, or other lien, during the time in which he shall carry on said business. Said bond shall be

Distiller to give bond.

with at least two sureties, approved by the collector of the district, and for a penal sum not less than * the amount of tax on the spirits that can be distilled in his distillery during a period of fifteen days. *But in no case shall the bond exceed the sum of one hundred thousand dollars.*

The collector may refuse to approve said bond when, in his judgment, the situation of the distillery is such as would enable the distiller to defraud the United States; and in case of such refusal the distiller may appeal to the Commissioner of Internal Revenue, whose decision in the matter shall be final. A new bond shall be required in case of the death, insolvency, or removal of either of the sureties, and may be required in any other contingency at the discretion of the collector or Commissioner of Internal Revenue.

New bond.

Penalty.

Every person who fails or refuses to give the bond herebefore required, or to renew the same, or who gives any false, forged, or fraudulent bond, shall forfeit the distillery, distilling-apparatus, and all real estate and premises connected therewith, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

See notes under section 3262, p. 157.

Suit should be first brought on warehousing bonds to recover tax on spirits before resorting to the distiller's bond. (Vol. 1 Treas. Dec. 1899, No. 20920.)

Sureties not liable when business is carried on at a place other than that mentioned in bond. (United States v. Boecker *et al.*, 21 Wall, 652; 21 Int. Rev. Rec., 78.)

The defendants in a suit on a distiller's bond, instituted for the recovery of internal-revenue taxes assessed under section 3253, Revised Statutes, have no legal right to the use at the trial of the reports, documents, and other papers on file in the office of the Commissioner of Internal Revenue, upon which the Commissioner acted in making the inquiries and determinations contemplated by section 3182, Revised Statutes, and from which he derived the information that, in whole or in part, formed the basis of the assessment. Nor has the court authority to compel the production of such papers. (16 Op. Atty. Gen., 24.)

It is a settled principle of law that where a bond contains conditions, some of which are legal and others illegal, and they are severable and separable, the latter may be disregarded and the former enforced. (United States v. Hodson (1870), 10 Wall., 395.)

It is not competent for a public officer to vary or in any way change the terms of the distiller's bond required by law; though such an agreement or pledge may bind him individually, it is as to the Government inoperative and void. (United States v. Bicket *et al.*, 16 Int. Rev. Rec., 85.)

Liability of surety not to be extended beyond the terms of the contract. When, after a bond had been signed by two sureties with the understanding between them and the obligor and obligee that it was to be signed by a third surety whose name was written in the bond, the name of the third surety was altered in the body of the instrument, with the knowledge of the obligee, by the substitution of a different surety, who then signed the bond: *Held*, that the two sureties were discharged. (United States v. O'Neill and others, 30 Int. Rev. Rec., 127.)

Opening judgment; new trial; distiller's bond. A federal court has no power to open a judgment against the surety on a distiller's bond and grant a new trial, upon the ground that certain facts, existing when the case was tried, were not then put in evidence. (United States v. Millinger *et al.*, 7 Fed. Rep., 187.)

[SEC. 3260a] *Section 67, act of August 28, 1894 (28 Stat., 509).* That whenever any person intending to commence or to continue the business of a distiller shall execute a bond under the provisions of section thirty-two hundred and sixty of the Revised Statutes of the United States, and file the same with the collector of internal revenue for the district in which he proposes to distill, the collector may refuse to approve said bond if the person offering the same shall have been previously convicted, in a court of competent jurisdiction, of any fraudulent noncompliance with any of the provisions of law relating to the duties and business of distillers, or if the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall have compromised such an offense with the person upon the payment of penalties or otherwise, and, in case of such refusal, the person so proposing to distill may appeal to the Commissioner of Internal Revenue, whose decision in the matter shall be final.

Collectors may refuse to approve bond of distiller in certain cases.

SEC. 3261. No collector shall approve the bond of any distiller until all the requirements of the law and all regulations made by the Commissioner of Internal Revenue in relation to distilleries, in pursuance thereof, have been complied with.

Bond not to be approved until law and regulations are complied with.

Every collector who violates this provision shall forfeit and pay two thousand dollars, and be dismissed from office.

Penalty against collector.

SEC. 3262, *as amended by section 2, act of May 28, 1880 (21 Stat., 145).* No bond of a distiller shall be approved, unless he is the owner in fee, unincumbered by any mortgage, judgment, or other lien, of the lot or tract of land on which the distillery is situated, or unless he files with the collector, in connection with his notice, the written consent of the owner of the fee, and of any mortgagee, judgment-creditor, or other person having a lien thereon, duly acknowledged, that the premises may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes and penalties shall have priority of such mortgage, judgment, or other incumbrance, and that in case of the forfeiture of the distillery premises, or of any part thereof, the title of the same shall vest in the United States, discharged from such mortgage, judgment, or other incumbrance.

Distiller must be owner in fee-simple, or have written consent of owner, etc.

In any case where the owner of a distillery or distilling-apparatus, erected prior to the twentieth day of July, eighteen hundred and sixty-eight, has only an estate for a term of years or other estate less than fee-simple in the lot or tract of land on which the distillery is situated, the evidence of title to which shall have been duly recorded prior to that date; or in like case, where the lease or other evidence of title is held but was not required by the laws of the State to be recorded in order to be valid at the time of its execution; or in any case of such prior erection where the title was then, and has continued to be, in litigation; or in any case of such prior erection where such owner is possessed of the fee, but incumbered with a mortgage executed and duly recorded prior to said twentieth of July, eighteen hundred and sixty-eight, and not due, or in any case of such prior erec-

tion where the fee is held by a feme-covert, minor, person of unsound mind, or other person incapable of giving consent, as hereinbefore required, the value of such lot or tract of land, together with the building and distilling-apparatus, shall be appraised in the manner to be prescribed by the Commissioner of Internal Revenue; and the collector may, at the discretion of the Commissioner, be authorized to accept, in lieu of the said written consent of the owner of the fee, the bond of such distiller, in such form as the Commissioner may prescribe, with not less than two sureties, conditioned that in case the distillery, distilling-apparatus, or any part thereof, shall by final judgment be forfeited for the violation of any of the provisions of law, the obligors shall pay the amount stated in said bond. Said sureties shall be residents of the collection-district or county, or of an adjoining county in the same State in which the distillery is situated, and owners of unincumbered real estate in said district or county, or adjoining county, equal to such appraised value, and the penal sum of said bond shall be equal to the appraised value of said lot or tract of land together with the buildings and distilling apparatus:

Provided, That in case of any distillery sold at judicial or other sale in favor of the United States, a bond may be taken at the discretion of the Commissioner of Internal Revenue, in lieu of the written consent required by this section, and the person giving such bond may be allowed to operate such a distillery during the existence of the right of redemption from such sale, on complying with all the other provisions of law.

And provided also, *That the collector may at any time, at the discretion of the Commissioner, accept such bond as is authorized to be given by the distiller in lieu of the written consent of the owner of the fee in the case of a distillery erected prior to July twentieth, eighteen hundred and sixty-eight, notwithstanding such distillery has since then been increased by the addition of land or buildings adjacent or contiguous thereto, not owned by the distiller himself in fee; such bond to be for and in respect of such addition only, if the distillery be one which the distiller owns in fee or in respect to which he has procured the written consent of the owner of the fee or other incumbrance, otherwise to be for and in respect of the entire distillery as increased by such additions.*

A corporation may carry on the business of distilling in its corporate capacity. (15 Op. Atty. Gen., 230; 23 Int. Rev. Rec., 141.)

Bond not liable for tax when spirits are forfeited and sold subject to tax. (United States v. Ulrici *et al.*, 111 U. S., 38; 30 Int. Rev. Rec., 111.)

Bond valid though not in form prescribed. (United States v. Hodson, 10 Wall., 395; 12 Int. Rev. Rec., 213; United States v. Mynderse, 12 *ibid.*, 104; 14 *ibid.*, 180.)

Liability of sureties when distillery premises are encumbered. (Osborne v. United States, 19 Wall., 577; 20 Int. Rev. Rec., 126.)

Sureties not liable when distillery is carried on at a place other than that mentioned in bond. (United States v. Boecker *et al.*, 21 Wall., 652; 21 Int. Rev. Rec., 78.)

Laches of officers does not relieve sureties. (United States v. Hosmer *et al.*, 21 Int. Rev. Rec., 14; Hart v. United States, 5 Otto., 316; Minturn v. United States, 16 *ibid.*, 437; 29 Int. Rev. Rec., 34.)

Stockholders of a corporation engaged in distilling can not be accepted as sureties. (16 Op. Atty. Gen., 10; 24 Int. Rev. Rec., 153.)

Married women giving bond. (*United States v. Garlinghouse et al.*, 4 Ben., 194; 11 Int. Rev. Rec., 11.)

Distiller's bond, effect of surety signing upon condition another name is added. (*Dair v. United States*, 16 Wall., 1; 18 Int. Rev. Rec., 10.)

In order to enforce this lien suit in equity is necessary. (*Manfield v. Excelsior Refinery Company*; 36 Int. Rev. Rec., 165; 135 U. S., 326.)

Recovery of fine on distiller's bond. (*United States v. Thompson et al.*; 37 Int. Rev. Rec., 160.)

Defenses on suits on bonds.—Validity of assessment. (*Clinkenbeard v. United States*, 21 Wall., 65; 21 Int. Rev. Rec., 37.)

Compromise with principal. (*United States v. Chouteau*, 102 U. S. 603; 27 Int. Rev. Rec., 49.) As to assessment being *prima facie* evidence only. (*United States v. Rindskopf*, 105 U. S., 413; 28 Int. Rev. Rec., 141.)

"The official bond of parties undoubtedly covers not merely duties imposed by existing law, but duties belonging to and naturally connected with their office or business imposed by subsequent law." (*United States v. Singer*, 15 Wall., 112; 17 Int. Rev. Rec., 9. See also *United States v. Powell*, 14 Wall., 493; 17 Int. Rev. Rec., 18.)

In an action on a distiller's bond a verdict was rendered for the full amount of the bond, subject to the opinion of the court upon the question whether the sureties were entitled to a deduction from the verdict of the amount realized from the sale of the distiller's personal property. *Held*, on a motion for judgment on the verdict, that the judgment should be entered for the full amount of the bond, the sum realized from the personal property not being a legal offset. (*United States v. Loeb et al.*, 14 Fed. Rep., 688.)

The stealing of distilled spirits from a distillery warehouse by reason of the omission of the internal-revenue officers to provide sufficient locks on the doors affords no defense to an action on the distiller's bond to pay the tax due on the spirits before their removal and within three years from the date of entry. (*United States v. Witten*, 143 U. S., 76; 38 Int. Rev. Rec., 46.)

SEC. 3263. Every distiller and person intending to engage in the business of a distiller shall, previous to the approval of his bond, cause to be made, under the direction of the collector of the district, an accurate plan and description, in triplicate, of the distillery and distilling-apparatus, distinctly showing the location of every still, boiler, doubler, worm-tub, and receiving-cistern, the course and construction of all fixed pipes used or to be used in the distillery, and of every branch and every cock or joint thereof, and of every valve therein, together with every place, vessel, tub, or utensil from and to which any such pipe leads, or with which it communicates; also the number and location and cubic contents of every still, mash-tub, and fermenting-tub, the cubic contents of every receiving-cistern, and the color of each fixed pipe, as required in this Title. One copy of said plan and description shall be kept displayed in some conspicuous place in the distillery, and two copies shall be furnished to the collector of the district, one of which shall be kept by him, and the other transmitted to the Commissioner of Internal Revenue. The accuracy of every such plan and description shall be verified by the collector, the draughtsman, and the distiller; and no alteration shall be made in such distillery without the consent, in writing, of the collector. Any alteration so made shall be shown on the

Plan of distillery.

original, or by a supplemental plan and description, and a reference thereto noted on the original, as the collector may direct; and any supplemental plan and description shall be executed and preserved in the same manner as the original.

Distillers whose distilleries have a daily spirit-producing capacity of 30 gallons of proof spirits, or less, are exempted from the provision requiring a plan. (§ 3255a, p. 151.)

Surveys of distilleries.

SEC. 3264, *as amended by section 5, act of March 1, 1879. (20 Stat., 327.)*

On receipt of notice that any person, firm, or corporation wishes to commence the business of distilling, the collector, or a deputy collector, to be designated by him, shall proceed in person, at the expense of the United States, with the aid of an assistant designated by the Commissioner of Internal Revenue for the purpose of making surveys of distilleries in that district, to make a survey of such distillery for the purpose of estimating and determining its true spirit-producing capacity for a day of twenty-four hours.

In all surveys, forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses, except in distilleries operating on the sour mash principle, in which distilleries sixty gallons of beer brewed or fermented from grain shall represent not less than one bushel of grain.

A written report of such survey shall be made in triplicate, of which one copy shall be delivered to the distiller, one copy shall be retained by the collector, and one copy shall be transmitted to the Commissioner of Internal Revenue, and the survey shall take effect upon the delivery of such copy to the distiller.

Resurvey.

Whenever the Commissioner is satisfied that any report of the capacity of a distillery is incorrect or needs revision, he shall direct the collector to make in like manner another survey of said distillery, and the report thereof shall be made and deposited as hereinbefore required:

Provided, That the survey of any distillery estimated and stated by the distiller, in his notice of intention to distill, as capable of distilling not more than one hundred and fifty proof-gallons of distilled spirits every twenty-four hours may be made by the collector or by a deputy collector without the aid of an assistant; and that all surveys made for the purpose of correcting clerical errors or errors of computation existing in the report of a previous survey, and all surveys made for the purpose of changing the true spirit-producing capacity of any distillery for a day of twenty-four hours as estimated and determined by a previous survey, but which surveys do not require the re-measuring of the fermenting-tubs in a grain or molasses distillery, or the still or stills in a distillery of apples, peaches, or grapes exclusively, may be made without taking the measurements of the fermenting tubs or stills, as the case may be, and without revisiting the distillery:

And provided further, That the Commissioner of Internal Revenue may, whenever he shall deem it proper, designate an officer, agent, or person other than the collector or deputy collector, to make, with or without the aid of a designated assistant, the surveys and resurveys hereinabove provided for.

As to necessity of delivering a copy of the survey to a distiller to fix his liability; survey binding on distiller. (*Peabody v. Stark*, 16 Wall., 240; 17 Int. Rev. Rec., 106. *United States v. Ferrary*, 93 U. S. (3 Otto), 625; 22 Int. Rev. Rec., 394. *Wright v. United States*, 108 U. S., 281.)

SEC. 3265. Any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling, shall, before the same is removed from the place of manufacture, notify in writing the collector of the district in which such still, boiler, or other vessel is to be used or set up, by whom it is to be used, its capacity, and the time when the same is to be removed from the place of manufacture; and no such still, boiler, or other vessel shall be set up without the permit in writing of the said collector for that purpose; and any person who sets up any such still, boiler, or other vessel, without first obtaining a permit from the said collector of the district in which such still, boiler, or other vessel is intended to be used, or who fails to give such notice, shall pay in either case the sum of five hundred dollars, and shall forfeit the distilling apparatus thus removed or set up in violation of law.

Notice by manufacturer of a still.

Penalty for setting up still without permit.

SEC. 3266. No person shall use any still, boiler, or other vessel, for the purpose of distilling, in any dwelling-house, or in any shed, yard, or inclosure connected with any dwelling-house, or on board of any vessel or boat, or in any building, or on any premises where beer, lager beer, ale, porter, or other fermented liquors, vinegar, or ether are (is) manufactured or produced, or where sugars or sirups are refined, or where liquors of any description are retailed, or where any other business is carried on; or within six hundred feet in a direct line of any premises authorized to be used for rectifying; and every person who does any of the acts prohibited by this section, or aids or assists therein, or causes or procures the same to be done, shall be fined one thousand dollars and imprisoned for not less than six months nor more than two years, in the discretion of the court, for each such offense: *Provided*, That saleratus may be manufactured, or meal or flour ground from grain, in any building or on any premises where spirits are distilled; but such meal or flour shall be used only for distillation on the premises: *Provided further*, That any boiler used in generating steam or heating water to be used in any distillery, may be located in any other building or on any other premises to be connected with such still or boiling-tubs, by suitable pipes or other apparatus, or the steam from such boiler in the distillery may be conveyed to other premises to be used for manufacturing or other purposes.

Distilling on certain premises prohibited; penalty.

Vinegar (§ 3282). See act of June 14, 1879, p. 171.

Rectifying within 600 feet, see section 3244, subsection third, and section 3280 (8 Int. Rev. Rec., 73).

Distilling on premises where vinegar was manufactured. (*United States v. Simmons* 96 U. S. (6 Otto), 360; 24 Int. Rev., Rec., 347).

Indictment under section 3266. (*United States v. Malone*, 9 Fed. Rep., 897).

The prohibition of a distillery within 600 feet of a rectifying establishment is not an unwarrantable interference with the use and disposition of property. If a business affords unusual facilities for evading the Government tax, then Congress may prescribe the modes, conditions, and limitations under which that business can be transacted. (*Mason v. Rollins*, 2 Biss., 99).

Receiving-cisterns in distilleries.

SEC. 3267. The owner, agent, or superintendent of any distillery established as hereinbefore provided, shall erect, in a room or building to be provided and used for that purpose, and for no other, and to be constructed in the manner to be prescribed by the Commissioner of Internal Revenue, two or more receiving-cisterns, each to be at least of sufficient capacity to hold all the spirits distilled during the day of twenty-four hours, into which shall be conveyed all the spirits produced in said distillery; and each of said cisterns shall be so constructed as to leave an open space of at least three feet between the top thereof and the floor or roof above, and of not less than eighteen inches between the bottom thereof and the floor below, and shall be so situated that the officer can pass around the same, and shall be connected with the outlet of the worm or condenser by suitable pipes or other apparatus, so constructed as always to be exposed to the view of the officer, and so connected and constructed as to prevent the abstraction of spirits while passing from the outlet of the worm or condenser back to the still or doubler, or forward to the receiving-cistern. Such cisterns and the room in which they are contained shall be in charge and under the lock and seal of the internal-revenue gauger designated for that duty; and all locks and seals required by law shall be provided by the Commissioner of Internal Revenue, at the expense of the United States; and the keys shall be in charge of the collector or such gauger as he may designate. On the third day after the spirits are conveyed into such cistern they shall be drawn off into casks, under the supervision of such gauger, in the presence of the store-keeper, and be removed directly to the distillery warehouse; but on special application to the collector by the owner, agent, or superintendent of any distillery, the spirits may be drawn off from the said cisterns, under the supervision of the gauger, at any time previous to the third day.

See [§ 3255a], allowing exemption from certain provisions of this section in case of small distilleries.

The penalty for failing to comply with the requirements of this section is provided by section 3456, p. 345. (*United States v. Wm. McKim & Co.*, 10 Int. Rev. Rec., 74.)

Question of intent considered. (*Felton et al. v. United States*, 96 U. S. (6 Otto), 699; 24 Int. Rev. Rec., 252.)

Breaking locks, gaining access to cistern, etc.; penalty.

SEC. 3268. Every person who destroys, breaks, injures, or tampers with any lock or seal which may be placed on any cistern-room or building by the duly authorized officers of the revenue, or opens said lock or seal, or the door to said cistern-room or building, or in any manner gains access to

the contents therein, in the absence of the proper officer, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than one year nor more than three years.

SEC. 3269. The door of the furnace of every still or boiler used in any distillery shall be so constructed that it may be securely fastened and locked. The fermenting-tubs shall be so placed as to be easily accessible to any revenue officer, and each tub shall have distinctly painted thereon in oil-colors its cubic contents in gallons and the number of the tub. There shall be a clear space of not less than one foot around every wood-still, and not less than two feet around every doubler and worm-tank.¹ The doubler and worm-tanks shall be elevated not less than one foot from the floor, and every fixed pipe to be used by the distiller, except for conveyance of water, or of spent mash or beer only, shall be so fixed and placed as to be capable of being examined by the officer for the whole of its length or course, and shall be painted, and kept painted, as follows, that is to say: Every pipe for the conveyance of mash or beer shall be painted of a red color; every pipe for the conveyance of low-wines back into the still or doubler shall be painted blue; every pipe for the conveyance of spirits shall be painted black, and every pipe for the conveyance of water shall be painted white. Whenever any fixed pipe is used by any distiller which is not painted or kept painted as herein directed, or which is painted otherwise than as herein directed, he shall forfeit the sum of one thousand dollars.

Furnaces, tubs, doublers, worm-tanks.

Penalty.

SEC. 3270. The Commissioner of Internal Revenue is authorized to order and require such changes of or additions to distilling apparatus, connecting-pipes, pumps, or cisterns, or any machinery connected with or used in or on the distillery premises, or may require to be put on any of the stills, tubs, cisterns, pipes, or other vessels, such fastenings, locks, or seals as he may deem necessary.

Apparatus and fastenings.

SEC. 3271. Every distiller shall provide, at his own expense, a warehouse, to be situated on and to constitute a part of his distillery premises, and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall have been paid; but no dwelling-house shall be used for such purpose, and no door, window, or other opening shall be made or permitted in the walls of such warehouse leading into the distillery or into any other room or building; and such warehouse, when approved by the Commissioner of Internal Revenue, on report of the collector, is hereby declared to be a bonded warehouse of the United States, to be known as a distillery warehouse, and shall be under the direction and control of the collector of the district, and in charge of an internal-revenue store-keeper, assigned thereto by the Commissioner.

Distillery warehouse.

The Government has a lien on spirits in warehouse for deficiency tax, and a purchaser takes the property subject to the lien. (*Hartman v. Bean*, 99 U. S., 393, 25 Int. Rev. Rec., 141.)

¹ See section 3255a, p. 152, authorizing certain exemptions.

Goods in the hands of the United States held for taxes can not be attached by State officers. (*Harris v. Dennie*, 3 Pet., 292.) Spirits in bond not liable to seizure by sheriff. (*McCullough v. Large et al.*, 20 Fed. Rep., 309; 30 Int. Rev. Rec., 166; Vol. 2, Treas. Dec. (1899), No. 21710.)

Distilled spirits in a United States bonded warehouse can not be seized under State process (1894). (21 Op. Atty. Gen., 73.) Sheriff can sell without taking possession. (*Kiel v. Harris*, 31 Int. Rev. Rec., 408.)

Spirits in warehouse destroyed by fire, section 3221, p. 106. (*Farrell v. United States*, 99 U. S., 221; 25 Int. Rev. Rec., 83; *Insurance Companies v. Thompson*, 5 Otto, 547; *United States v. Alexander et al.*, 110 U. S., 325.)

Special bonded warehouses for fruit brandy. (See act of March 3, 1877, p. 210, and act of October 13, 1888, p. 214.)

Distillery warehouses can be continued in use after changes have occurred in the management of the business.

[SEC. 3271a]. *Act of January 8, 1874 (13 Stat., 2)*. That when from death or any other cause there shall be any change in the person, firm or company engaged in the business of distilling at any distillery, and the person, firm or company that by reason of such change ceases to carry on said business at such distillery has at the time of such change spirits in the distillery warehouse, it shall be lawful for the Commissioner of Internal Revenue, upon the written consent of the surviving principals and sureties interested, and under such rules and regulations, and upon such other conditions as he may prescribe, to permit the succeeding person, firm, or company to use the distillery warehouse on the premises in the same manner as if it did not contain distilled spirits belonging to the original person, firm or company after setting apart and separating, by a secure and unbroken partition such portion of it as may be necessary for the storage and safe-keeping of the spirits distilled by the original person, firm or company, during the period allowed by law for the removal of distilled spirits from distillery warehouses, or until said spirits are removed, and the tax paid thereon within that time.

Use of distillery warehouses by successors in certain cases.

Partition.

Lien for tax not impaired.

Provided, That nothing herein contained shall impair or in any way affect the lien existing at the time of such change under section one of the internal revenue act of July twenty, eighteen hundred and sixty-eight, as amended, or other liabilities under any internal revenue law, but the existence of such lien shall be no ground for refusing to approve the bond of the succeeding person, firm or company, anything in section eight of the said act of July twenty, eighteen hundred and sixty-eight, as amended, to the contrary notwithstanding.

The provisions of the act of July 20, 1868, here referred to (15 Stat., 125, 128), and the amendments thereto, are incorporated in the Revised Statutes, sections 3251, 3260, 3262.

When a warehouse becomes unsafe.

SEC. 3272. Whenever in the opinion of the Commissioner of Internal Revenue any distillery or other warehouse is unsafe or unfit for use, or the merchandise therein is for any reason liable to loss or great wastage, he may discontinue such warehouse, and require the merchandise therein to be transferred to such other warehouse as he may designate and within such time as he may prescribe. Such transfer shall be made under the supervision of the collector, or of such other officer as may be designated by the Commissioner,

and the expense thereof shall be paid by the owner of the merchandise. Whenever the owner of such merchandise fails to make such transfer within the time prescribed, or to pay the just and proper expense of such transfer, as ascertained and determined by the Commissioner, such merchandise may be seized and sold by the collector in the same manner as goods are sold upon distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expenses of such sale and removal, and the balance paid over to the owner of such merchandise.

SEC. 3273. The store-keeper assigned to any distillery warehouse shall also have charge of the distillery connected therewith; and every store-keeper shall have charge of the warehouse to which he is assigned, and of such distillery, under the direction of the collector controlling the same. Storekeepers have charge under direction of collector.

Storekeepers' books and returns. (§§ 3301, 3302, p. 187.)

SEC. 3274. Every distillery warehouse shall be in the joint custody of the store-keeper and the proprietor thereof. It shall be kept securely locked, and shall at no time be unlocked, or opened, or remain open, unless in the presence of such store-keeper, or other person who may be designated to act for him, as provided by law; and no articles shall be received in or delivered from such warehouse except on an order or permit addressed to the store-keeper and signed by the collector having control of the warehouse. Custody and management of warehouse.

SEC. 3275. No fence or wall of a height greater than five feet shall be erected or maintained around the premises of any distillery, so as to prevent easy and immediate access to such distillery. And every distiller shall furnish to the collector of the district as many keys of the gates and doors of the distillery as may be required by the collector, from time to time, for any revenue officer or other person who may be authorized to make survey or inspection of the premises, or of the contents thereof; and said distillery shall be kept always accessible to any officer or other person having any such key. Every person who violates any of the foregoing provisions of this section by negligence or refusal, or otherwise, shall pay a penalty of five hundred dollars. Distiller to keep distillery accessible. Penalty.

SEC. 3276, *as amended by section 5, act of March 1, 1879 (20 Stat., 327)*. It shall be lawful for any revenue officer at all times, as well by night as by day, to enter into any distillery or building or place used for the business of distilling, or used in connection therewith for storage or other purposes, and to examine, gauge, measure, and take an account of every still or other vessel or utensil of any kind, and of all low-wines, and of the quantity and gravity of all mash, wort, or beer, and of all yeast, or other compositions for exciting or producing fermentation in any mash or beer, of all spirits and of all materials for making or distilling spirits, which may be in any such distillery or premises, or in possession of the distiller. Power of revenue officers to enter and examine distilleries.

And whenever any internal-revenue officer, or any person called by him to his aid, is hindered, obstructed, or pre- Obstructing officer; penalty.

vented by any distiller, or by any workman, or other person acting for such distiller or in his employ, from entering into any such distillery or building or place as aforesaid; or any such officer is by the distiller or his workmen, or any person in his employ, prevented or hindered from, or opposed, or obstructed, or molested in the performance of his duty under the internal-revenue laws, in any respect, the distiller shall forfeit the sum of *not exceeding* one thousand dollars.

Penalty for not admitting officer.

And whenever any officer, having demanded admittance into a distillery or distillery premises, and having declared his name and office, is not admitted into such distillery or premises by the distiller or other person having charge thereof, it shall be lawful for such officer at all times, as well by night as by day, to break open by force any of the doors or windows, or to break through any of the walls of such distillery or premises necessary to be broken open or through, to enable him to enter the said distillery or premises; and the distiller shall forfeit the sum of *not exceeding* one thousand dollars.

All the provisions of sections 3276, 3277, and 3278 are extended and made applicable to all premises whereon vinegar is manufactured, to all manufacturers of vinegar and their workmen or other persons employed by them. (§ 3282, p. 170.)

Distillere and rectifiers to furnish facilities for examination; penalty for neglect.

SEC. 3277. On the demand of any internal-revenue officer, every distiller or rectifier shall furnish strong, safe, and convenient ladders of sufficient length to enable the officer to examine and gauge any vessel or utensil in such distillery or premises; and shall, at all times when required, supply all assistance, lights, ladders, tools, staging, or other things necessary for inspecting the premises, stocks, tools, and apparatus belonging to such person, and shall open all doors, and open for examination all boxes, packages, and all casks, barrels, and other vessels not under the control of the revenue officer in charge, under a penalty of five hundred dollars for every refusal or neglect so to do.

Section 3152, page 66, makes this section applicable to revenue agents.

Officers can break up ground or walls in order to examine.

SEC. 3278. It shall be lawful for any revenue officer, and any person acting in his aid, to break up the ground on any part of a distillery, or premises of a distiller or rectifier, or any ground adjoining or near to such distillery or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to examine whether such pipe or other conveyance conveys or conceals any mash, wort, or beer, or other liquor, which may be used for the distillation of low-wines or spirits, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

Signs to be put up by distillere and rectifiers; penalty for neglect.

SEC. 3279. Every person engaged in distilling or rectifying spirits, and every wholesale liquor-dealer, shall place and keep conspicuously on the outside of the place of such

business a sign, exhibiting in plain and legible letters, not less than three inches in length, painted in oil-colors or gilded, and of a proper and proportionate width, the name or firm of the distiller, rectifier, or wholesale dealer, with the words: "Registered distillery," "rectifier of spirits," or "wholesale liquor dealer," as the case may be. Every person who violates the foregoing provision by negligence or refusal, or otherwise, shall pay a penalty of five hundred dollars.

And every person, other than a rectifier or wholesale liquor-dealer who has paid the special tax, or a distiller who has given bond as required by law, who puts up or keeps up the sign required by this section, or any sign indicating that he may lawfully carry on the business of a distiller, rectifier, or wholesale liquor-dealer, shall forfeit and pay one thousand dollars, and shall be imprisoned not less than one month nor more than six months. And every person who works in any distillery, rectifying establishment, or wholesale liquor-store, on which no sign is placed and kept, as hereinbefore provided; and every person who knowingly receives at, carries or conveys any distilled spirits to or from, any such distillery, rectifying establishment, warehouse, or store, or who knowingly carries and delivers any grain, molasses, or other raw material to any distillery on which such sign is not placed and kept, shall forfeit all horses, carts, drays, wagons, or other vehicle or animal used in carrying or conveying such property aforesaid, and shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned not less than one month nor more than six months.

The sign "Practical distiller," used by a wholesale dealer and rectifier who is not an authorized distiller is in violation of section 3279 Revised Statutes. (Vol. 1., Treas. Dec. (1898), No. 19331.)

SEC. 3280. It shall not be lawful for any distiller to commence or to continue the business of distilling, until he has given the bond required by law, and complied with the provisions of law relating to the registration and survey of distilleries, and the arrangement and construction of distilleries and the premises connected therewith; nor shall it be lawful for any person to engage in the business of distilling on any premises distant less than six hundred feet in a direct line from any premises used for rectifying; nor shall the processes of distillation and rectification both be carried on within the distance of six hundred feet in a direct line.

Section 3266, p. 161.

[SEC. 3281]. Section 16, act of February 8, 1875 (18 Stat., 307). That any person who shall carry on the business of a rectifier, wholesale liquor-dealer, retail liquor-dealer, wholesale dealer in malt-liquors, retail dealer in malt liquors, or manufacturer of stills, without having paid the special tax as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for

Penalty for using false signs, etc.

Distillers not to carry on business until the law is complied with.

Distilling within 600 feet of rectifying establishment prohibited.

Rectifiers, liquor dealers, etc., carrying on business without payment of special tax.

Distiller carrying on business without giving bond, or with intent to defraud.

Fine and im- every such offense, be fined not less than one hundred dol-
prisonment. lars nor more than five thousand dollars and imprisoned
not less than thirty days nor more than two years.

Forfeiture. And all distilled spirits or wines, and all stills or other
apparatus, fit or intended to be used for the distillation or
rectification of spirits, or for the compounding of liquors,
owned by such person, wherever found, and all distilled
spirits or wines and personal property found in the distill-
ery or rectifying establishment, or in any building, room,
yard, or inclosure connected therewith, and used with or
constituting a part of the premises; and all the right, title,
and interest of such person in the lot or tract of land on
which such distillery is situated, and all right, title, and
interest therein of every person who knowingly has suffered
or permitted the business of a distiller to be there carried
on, or has connived at the same; and all personal property
owned by or in possession of any person who has permitted
or suffered any building, yard, or enclosure, or any part
thereof, to be used for purposes of ingress or egress to or
from such distillery which shall be found in any such build-
ing, yard, or enclosure, and all the right, title, and interest
of every person in any premises used for ingress or egress
to or from such distillery, who has knowingly suffered or
permitted such premises to be used for such ingress or
egress, shall be forfeited to the United States.

See sections 3242, p. 119, 3257, p. 153.

See references under section 3453, p. 343.

Penalty for omitting to do things required where no punish-
ment is imposed by any other section. (§ 3456, p. 345.)

As to rectifiers carrying on business with intent to defraud.
(§ 3317, p. 196.)

As to sales made to evade tax. (§ 3454, p. 344.)

The provision declaring forfeiture of real estate not unconsti-
tutional. (*United States v. Distillery on West Front Street*, 11
Int. Rev. Rec., 174.)

Forfeiture dates back to the time the offense was committed,
and operates at that time as a statutory transfer of the right of
property to the Government. (*United States v. Fifty-six Barrels
of Whisky*, 1 Abb., U. S., 93, 4 Int. Rev. Rec., 106; *United
States v. One Cask, etc.*, 10 *ibid.*, 93; *Henderson's Distilled Spir-
its*, 14 Wall., 44; 15 Int. Rev. Rec., 119; *United States v. McCoy's
Distillery*, 21 *ibid.*, 165.)

The title of the Government to the property infected with
fraud vests from the time of its commission and the taint of
fraud inheres in it even in the possession of an innocent pur-
chaser. (*United States v. Eight Hundred Caddies of Tobacco*,
2 Bond, 305.)

Forfeiture does not attach to spirits acquired after the offense.
(*United States v. One Water Cask*, 10 Int. Rev. Rec., 93.)

Extent of forfeiture denounced against distillers for carry-
ing on business without having given bond, or with intent to
defraud, and omission to keep books. (§ 3305, p. 189.)

All personal property used in the unlawful business or in any
other business openly carried on upon the premises is forfeited,
even if the owner had no participation in or knowledge of the
unlawful acts.

The forfeiture of lands and buildings does not reach beyond
the right, title, and interest of the distiller, or of such other
persons as have consented to the carrying on of the business of
a distiller upon the premises. (*United States v. Stowell* (1890),
133 U. S., 1; 36 Int. Rev. Rec., 30.)

An engine is part of a house, and goes with it. (*Walker v.
Sherman*, 20 Wend., 635.)

As to the boiler, engine, pump, vats, and tanks. (*United States v. Stowell*, 133 U. S., 1; 36 Int. Rev. Rec., 30.)

Nothing can be plainer in legal decision than the proposition that the offense therein defined is attached primarily to the distillery, and the real and personal property used in connection with the same, without any regard whatsoever to the personal misconduct or responsibility of the owner, beyond what necessarily arises from the fact that he leased the property to the distiller, and suffered it to be used and occupied by the lessee as a distillery. (*Dobbins's Distillery v. United States*, 96 U. S., 395; 24 Int. Rev. Rec., 21.)

Distillery liable to forfeiture without regard to the culpability of the owner of the property. Mechanics' liens can not be enforced in State courts after seizure by the marshal in forfeiture proceedings. (*Heidritter v. Elizabeth Oil-Cloth Co.* (1881), 6 Fed. Rep., 138.)

When property becomes liable to forfeiture under the positive provisions of a statute, owners who have in no way participated in the frauds which caused the forfeiture, must seek redress from the wrongdoers who unlawfully used the property with which they were intrusted; or they can apply to the officers of the Government invested with the authority to remit forfeitures.

In this proceeding *in rem* the mules and wagon are considered as the offenders, and are liable to forfeiture without any regard whatsoever to the personal misconduct or responsibility of the owner. The principles of law upon this subject are clearly and fully announced in *Distillery v. United States* (96 U. S., 395), and cases cited. (*United States v. Two Bay Mules* (1888), 36 Fed. Rep., 84.)

Operation of forfeitures against innocent persons. (*United States v. One Barrel Whisky*, 4 Int. Rev. Rec., 146; *United States v. One Still*, 5 Blatch., 403; 5 Int. Rev. Rec., 189; *United States v. Twenty-one Barrels High Wines*, 6 *ibid.*, 213; *Distilled Spirits etc.* (mortgage), 2 Ben., 486; 8 Int. Rev. Rec., 81; *United States v. Whisky*, 11 *ibid.*, 109; *United States v. Distillery at Spring Valley* (leading case), 11 Blatch., 255; 18 Int. Rev. Rec., 59; *Dobbins v. United States*, 6 Otto, 395; 24 Int. Rev. Rec., 21; *United States v. One Copper Still* (mortgage), *ibid.*, 317; 8 Biss., 270; *Thacher's Distilled Spirits*, 103 U. S. (13 Otto), 679; 27 Int. Rev. Rec., 144.)

Where an act is committed by the owner of a distillery by which a forfeiture thereof is incurred under the revenue laws, and subsequently the owner conveys the property to an innocent purchaser without notice of the commission of the act, the property remains still subject to the forfeiture incurred. The conveyance, in such case, passes no title as against the United States. (16 Op. Atty. Gen., 41.)

As to person allowing ingress or egress over premises to or from a distillery. (*Gregory v. United States*, 17 Blatch., 325; 26 Int. Rev. Rec., 27.)

The acts of the agent imputed to the principal so far as they work the forfeiture of property used for unlawful purposes. (*Bush v. United States*, 31 Int. Rev. Rec., 305; 24 Fed. Rep., 917.)

Liability of employer for acts of servant. (*United States v. Buchanan*, 28 Int. Rev. Rec., 51.)

Amount of real estate liable to forfeiture. (*United States v. Piece of Land*, 1 Sawyer, 84; 11 Int. Rev. Rec., 126.)

Presumption and burden of proof. (*One Hundred and Ninety-nine Barrels of Whisky v. United States*, 94 U. S., 86; *United States v. One Still*, 5 Int. Rev. Rec., 189; *United States v. Mathoit*, 1 Sawyer, 142; 11 Int. Rev. Rec., 158.)

If a person is tried for the same offense for which distillery is seized and acquitted, it is a bar to a suit *in rem* against the distillery. (*Coffey v. United States*, 116 U. S., 436; 32 Int. Rev. Rec., 38.)

Evidence. (Quantity of distilled spirits, 9 Int. Rev. Rec., 9; *United States v. Blaisdell*, *ibid.*, 82; *United States v. Staton*, 25 *ibid.*, 10; *United States v. Dobbs*, 15 *ibid.*, 9.)

Arrest of persons while operating illicit distillery.

[SEC. 3281a.] *Section 9, act of March 1, 1879 (20 Stat., 327).* Where any marshal or deputy marshal of the United States within the district for which he shall be appointed shall find any person or persons in the act of operating an illicit distillery, it shall be lawful for such marshal or deputy marshal to arrest such person or persons, and take him or them forthwith before some judicial officer named in section one thousand and fourteen of the Revised Statutes, who may reside in the county of arrest or if none, in that nearest to the place of arrest, to be dealt with according to the provisions of sections ten hundred and fourteen, ten hundred and fifteen, ten hundred and sixteen of the said Revised Statutes.

Section 1014 Appendix, p. 362.

Warrants of arrest for violations of internal revenue laws may be issued by United States commissioners upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector, or deputy collector of internal revenue, or revenue agent, or private citizen, but no such warrant of arrest shall be issued upon the sworn complaint of a private citizen unless first approved in writing by a United States district attorney. Proviso to section 19, act of May 28, 1896 (29 Stat., 184).

Under section 19 of the act of May 28, 1896, a United States commissioner has no authority to issue a warrant on the complaint of a deputy marshal who arrested a defendant in the act of operating an illicit distillery, the complaint not having been approved by the district attorney *before* the warrant was issued, and he is not entitled to fees therefor. (IV Comp. Dec., 338.)

Mash, wort, and vinegar.

SEC. 3282, *as amended by section 5, act of March 1, 1879 (20 Stat., 327).*

No mash, wort, or wash, fit for distillation or for the production of spirits or alcohol, shall be made or fermented in any building or on any premises other than a distillery duly authorized according to law; and no mash, wort, or wash so made and fermented shall be sold or removed from any distillery before being distilled; and no person, other than an authorized distiller, shall, by distillation, or by any other process, separate the alcoholic spirits from any fermented mash, wort, or wash; and no person shall use spirits or alcohol, * * * in manufacturing vinegar or any other article, or in any process of manufacture whatever, unless the spirits or alcohol so used shall have been produced in an authorized distillery and the tax thereon paid. Every person who violates any provision of this section shall be fined for each offense not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years: *Provided further*, That nothing in this section shall be construed to apply to fermented liquors, or to fermented liquids used for the manufacture of vinegar exclusively. * * *

Penalty.

But no worm, goose-neck, pipe, conductor, or contrivance of any description whatsoever whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed or be fastened to or connected with any vaporizing apparatus used for the manufacture of vinegar; nor shall any worm be permitted on or near the premises where such vaporizing process is carried on.

Nor shall any vinegar factory, for the manufacture of vinegar as aforesaid, be permitted within six hundred feet of any distillery or rectifying house. But it shall be lawful for manufacturers of vinegar to separate, by a vaporizing process, the alcoholic property from the mash produced by them, and condense the same by introducing it into the water or other liquid used in making vinegar.

Vinegar factory not to be within 600 feet of a distillery.

No person, however, shall remove, or cause to be removed, from any vinegar factory or place where vinegar is made, any vinegar or other fluid or material containing a greater proportion than two per centum of proof spirits. Any violation of this provision shall incur a forfeiture of the vinegar, fluid, or material containing such proof spirits, and shall subject the person or persons guilty of removing the same to the punishment provided for any violation of this section.

Vinegar with over 2 per cent of alcohol.

And all the provisions of sections thirty-two hundred and seventy-six, thirty-two hundred and seventy-seven, and thirty-two hundred and seventy-eight of the Revised Statutes of the United States are hereby extended and made applicable to all premises whereon vinegar is manufactured, to all manufacturers of vinegar and their workmen or other persons employed by them.

Sec's. 3276, 3277, 3278, applicable.

Act of June 14, 1879 (21 Stat., 20). That any vinegar factory for the manufacture of vinegar, established and operated as a vinegar factory prior to March first, eighteen hundred and seventy-nine, may be operated for the manufacture of vinegar by the use of alcoholic vapor within such distance less than six hundred feet of any distillery or rectifying house under such regulations as the Commissioner of Internal Revenue may prescribe with the approval of the Secretary of the Treasury.

Vinegar factories before Mar. 1, 1879.

Manufacture of vinegar by the employment of alcoholic vapor. (25 Int. Rev. Rec., 157.)

United States v. Prussing (2 Biss., 344); United States v. Distillery (23 Int. Rev. Rec., 147).

SEC. 3283. No malt, corn, grain, or other material shall be mashed, nor any mash, wort, or beer brewed or made, nor any still used by a distiller, at any time between the hour of eleven in the afternoon of any Saturday and the hour of one in the forenoon of the next succeeding Monday; and every person who violates the provisions of this section shall be liable to a penalty of one thousand dollars.

No process for distilling between 11 p. m. of Saturday and 1 a. m. of Monday.

Penalty.

Relative to use of yeast rake on Sunday. (29 Int. Rev. Rec., 137.)

Relative to use of pumps on Sunday. (30 Int. Rev. Rec., 45.)

SEC. 3284. Every distiller or person employed in any distillery who, in the absence of the storekeeper, or person designated to act as storekeeper, uses, or causes or permits to be used, any material for the purpose of making mash, wort, or beer, or for the production of spirits, or removes any spirit, shall forfeit and pay double the amount of taxes on the spirits so produced, distilled, or removed, and in addition thereto be liable to a penalty of one thousand dollars.

Using material or removing spirits in absence of storekeeper.

Penalty.

SEC. 3285, as amended by section 3, act of May 23, 1880 (21 Stat., 145). Every fermenting tub shall be emptied at or before the end of the fermenting period; no fermenting tub in a sweet-mash distillery shall be filled oftener than once in seventy-two hours,

Emptying fermenting tubs.

nor in a sour-mash distillery oftener than once in ninety-six hours, nor in a rum distillery oftener than once in one hundred and forty-four hours.

Drawing off
water, cleansing
worm tube, etc.

SEC. 3286, *as amended by section 5, act of March 1, 1879 (20 Stat., 327).* Whenever any officer requires the water contained in any worm tub in a distillery, at any time when the still is not at work, to be drawn off, and the tub and worm cleansed, the water shall forthwith be drawn off, and the tub and worm cleansed by the distiller, or his workmen, accordingly; and the water shall be kept and continued out of such worm tub for the period of two hours, or until the officer has finished his examination thereof. For any refusal or neglect to comply with any provision of this section, the distiller shall forfeit the sum of *not exceeding* one thousand dollars; and it shall be lawful for the officer to draw off such water, or any portion of it, and to keep the same drawn off for so long a time as he shall think necessary.

Penalty.

Section 3152, page 66, gives revenue agents the authority here conferred on officers.

Removal of
spirits to ware-
house and gaug-
ing and stamping
same.

SEC. 3287, *as amended by act of March 1, 1879; section 6, act of May 28, 1880 (21 Stat., 145), and act of February 21, 1899 (30 Stat., 843).* All distilled spirits shall be drawn from the receiving cisterns into casks or packages, each of not less capacity than ten gallons wine measure, and shall thereupon be gauged, proved, and marked by an internal-revenue ganger, who shall cut on the cask or package containing such spirits, in a manner to be prescribed by the Commissioner of Internal Revenue, the quantity in wine gallons and in proof gallons of the contents of such casks or packages, and the particular name of such distilled spirits as known to the trade, that is to say, high wines, alcohol, or spirits, as the case may be, shall be marked or branded on the head of such cask or package in letters of not less than one inch in length; and the spirits shall be immediately removed into the distillery warehouse, and the ganger shall, in the presence of the storekeeper of the warehouse, place upon the head of the cask or package an engraved stamp, which shall be signed by the collector of the district and the storekeeper and ganger; and shall have written thereon the number of proof gallons contained therein, the name of the distiller, the date of the receipt in the warehouse, and the serial number of each cask or package, in progressive order, as the same are received from the distillery. Such serial number for every distillery shall be in a regular sequence of the serial number thereof, beginning with number one (No. 1) with the first cask or package deposited therein after July twentieth, eighteen hundred and sixty-eight, and no two or more casks or packages warehoused at the same distillery shall be marked with the same number. The said stamp shall be as follows:

"Distillery-warehouse stamp No. —. Issued by ———, collector, ——— district, State of ———, distillery warehouse of ———, 18—, Cask No. —; contents ——— gallons proof-spirits.

"United States Storekeeper.

"Attest:

United States Ganger."

Provided, however, That upon the application of the distiller, and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, distilled spirits may be drawn into wooden packages, each containing two or more metallic cans, which cans shall have each a capacity of not less than five gallons, wine measure, such packages to be filled and used only for exportation from the United States. And there shall be charged for each of said packages or cases for the expense of providing and affixing stamps, five cents instead of ten cents as now required by law.

Act of February 21, 1899.

Packages containing two or more metallic cans.

Five cents instead of 10 cents for stamps.

Under the law prior to the act of May 28, 1880, the minimum capacity of casks which could be used at distilleries was limited to 20 gallons, wine-measure.

Regulations concerning the exportation of distilled spirits in inclosed metallic cans. (Vol. 1, Treas. Dec., No. 20837; Series 7, No. 4, revised March 9, 1899.)

The deposit of the spirits in the warehouse was solely for the benefit of the distiller. The Government assumed no responsibility to him for their safe-keeping. (*United States v. Witten*, 143 U. S., 76; 38 Int. Rev. Rec., 46.)

Amending regulations concerning the serial numbers of distillers' packages. (Circular No. 119, Int. Rev. No. 546, Sept. 29, 1899; vol. 2, Treas. Dec. (1899), No. 21637, p. 202.)

SEC. 3288. No distilled spirits on which the tax has been paid shall be stored or allowed to remain on any distillery premises, under the penalty of a forfeiture of all spirits so found.

Tax-paid spirits not to remain on distillery premises.

Delay in affixing stamps indicating payment of tax on spirits no bar to forfeiture. (Letter to Collector Powers, May 22, 1896; 42 Int. Rev. Rec., 241.)

SEC. 3289. All distilled spirits found in any cask or package containing five gallons or more, without having thereon each mark and stamp required therefor by law, shall be forfeited to the United States.

Forfeiture of unstamped packages.

Sections 3299, p. 186, and 3323, p. 200.

Rectified spirits included in term "distilled spirits." (*Boyd v. United States*, 14 Blatch., 317.)

Whenever an examination of a distiller's original package shows an excess of one proof gallon or upward over contents, as shown by marks, brands, and stamps, it should be detained, gauged by two gaugers, and if excess is found by both to be 1 proof gallon or upward, the taxable excess should be estimated by the collector and reported for assessment against the distiller. * * * (Regulations, Series 7, No. 7, p. 162; 25 Int. Rev. Rec., 157.)

In case the tax on the spirits, as above, is collected in a district other than that in which the spirits are produced, the officer making the collection is directed to transmit the amount collected, either by certificate of deposit or otherwise, as may be most convenient, to the collector of the district in which the spirits are produced, and report the facts to the Commissioner. (25 Int. Rev. Rec., 373.)

Stamps without date forfeit spirits. (*United States v. 9 packages and United States v. 64 packages* (1892), 51 Fed. Rep., 191.)

See on this section *United States v. One Rectifying Establishment* (11 Int. Rev. Rec., 45); *United States v. 32 Barrels Distilled Spirits* (5 Fed. Rep., 188).

Gauger employ-
ing distiller, etc.,
to use brands or
perform his du-
ties; penalty.

SEC. 3290. Whenever any gauger employs any owner, agent, or superintendent of any distillery or distillery warehouse, or any person in the service of such owner, agent, or superintendent, or any rectifier or wholesale liquor-dealer, or any person in the service of such rectifier or wholesale liquor-dealer, to use his brands, or to discharge any of the duties imposed upon him by law, he shall, for each offense so committed, pay a fine not exceeding one thousand dollars, in the discretion of the court.

Gauger can not delegate his authority to any person. No substitution authorized. (*United States v. Bittinger*, 21 Int. Rev. Rec., 342.)

Regulations in regard to unofficial gauging. (Series 7, No. 2, Revised, p. 112.)

Attachment of stamps by the successor of a gauging officer who has gauged spirits without stamping the package and completing the marking. (*Circular No. 466*, July 25, 1896; 42 Int. Rev. Rec., 325.)

Internal-revenue officers prohibited from acting as agents of distillers. (*Letter to Collector Herring*, August 17, 1896; 42 Int. Rev. Rec., 354.)

Gauger's re-
turns.

SEC. 3291. Every gauger shall, under such regulations as may be prescribed by the Commissioner of Internal Revenue, make a daily return to the collector of his district, giving a true account, in detail, of all articles gauged and proved or inspected by him, and for whom, and the number and kind of stamps used by him.

Gauger's compensation, etc. (§ 3157, p. 70.)

Fraudulent in-
spection, gaug-
ing, etc.; penalty.

SEC. 3292. Every gauger who makes any false or fraudulent inspection, gauging, or proof shall pay a penalty of one thousand dollars, and be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

ENTRIES FOR DEPOSIT AND WAREHOUSING BONDS COVERING SPIRITS IN DISTILLERY WAREHOUSES AND SPECIAL BONDED WAREHOUSES.

SEC. 3293, as amended by section 4, act of May 28, 1880 (21 Stat., 145). The distiller [or owner] of all spirits removed as aforesaid to the distillery warehouse shall, on the first day of each month, or within five days thereafter, enter the same for deposit in such warehouse, under such regulations as the Commissioner of Internal Revenue may prescribe. Said entry shall be in triplicate, and shall contain the name of the person making the entry, the designation of the warehouse in which the deposit is made, and the date thereof, and shall be in the following form:

Entry, etc., of
spirits removed
to distillery
warehouse.

ENTRY FOR DEPOSIT IN DISTILLERY WAREHOUSE.

Entry of distilled spirits deposited by ———, in distillery warehouse ———, in the ——— district, State of ———, during the month ending on the ——— day of ———, anno Domini ———.

And the entry shall specify the kind of spirits, the whole number of packages, the marks and serial numbers thereon, the number of gauge or wine gallons, proof-gallons, and taxable gallons, and the amount of tax on the spirits contained

in them; all of which shall be verified by the oath of the distiller [or owner]* of the same attached to the entry. The said distiller [or owner]* shall at the time of making said entry give his bond in duplicate, with one or more sureties, satisfactory to the collector of the district, conditioned that the principal named in said bond shall pay the tax on the spirits as specified in the entry, or cause the same to be paid, before removal from said distillery warehouse, and within [three]* years from the date of said entry; and the penal sum of such bond shall not be less than the amount of the tax on such distilled spirits. One of said entries shall be retained in the office of the collector of the district, one sent to the storekeeper in charge of the warehouse, to be retained and filed in the warehouse, and one sent with duplicate of the bond to the Commissioner of Internal Revenue, to be filed in his office.

Bond required.

Spirits to be removed from bond within three years.

A new bond shall be required in case of the death, insolvency, or removal of either of the sureties, and may be required in any other contingency affecting its validity or impairing its efficiency, at the discretion of the Commissioner of Internal Revenue. And in case the distiller [or owner] fails or refuses to give the bond hereinafore required, or to renew the same, or neglects to immediately withdraw the spirits and pay the tax thereon, or if he neglects to withdraw any bonded spirits and pay the tax thereon before the expiration of the time limited in the bond, the collector shall proceed to collect the tax by distraint, issuing his warrant of distraint for the amount of tax found to be due, as ascertained by him from the report of the gauger if no bond was given, or from the terms of the bond if a bond was given. But this provision shall not exclude any other remedy or proceeding provided by law.

New bond in case of death, etc.

If it shall appear at any time that there has been a loss of distilled spirits from any cask or other package hereafter deposited in a distillery warehouse, other than the loss provided for in section thirty-two hundred and twenty-one of the Revised Statutes of the United States, as amended, which, in the opinion of the Commissioner of Internal Revenue, is excessive, he may instruct the collector of the district in which the loss has occurred to require the withdrawal from warehouse of such distilled spirits, and to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired. If the said tax is not paid on demand, the collector shall report the amount due upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected.

Excessive loss of spirits in warehouse.

That the tax on all distilled spirits hereafter entered for deposit in distillery warehouses shall be due and payable before and at the time the same are withdrawn therefrom

* NOTE.—Portions in brackets [] applicable only to spirits deposited and bonded prior to August 28, 1894. See section 49, act of August 28, 1894 [3293 a] p. 176, which provides that the bond shall be given by the distiller and that the period shall be eight years.

Tax to be paid and within [three] years from the date of the entry for deposit therein; and warehousing bonds hereafter taken under the provisions of section thirty-two hundred and ninety-three of the Revised Statutes of the United States shall be conditioned for the payment of the tax on the spirits as specified in the entry before removal from the distillery warehouse, and within [three] years from the date of said bonds.

Portions in brackets [] applicable only to spirits deposited and bonded prior to August 28, 1894.

See following section.

Collectors will, in all cases where the distiller neglects to pay the tax on his bonded spirits within the time fixed by law, proceed to collect the tax due as above provided, instead of reporting the same on lists, Form 23.

In case of distraint, the collector will first distraint upon the spirits as to which the tax is due and is a first lien (§ 3251), and, if further distraint becomes necessary, upon the distillery property, which is also subject to the lien imposed by section 3251. (Circular letter to collectors, November 4, 1899; vol. 2, Treas. Dec., No. 21735.)

Warehousing bonds to be given by distillers.

[SEC. 3293 a.] *Sec. 49 of the act of August 28, 1894 (28 Stat., 509).* That warehousing bonds and transportation and warehousing bonds, conditioned for the payment of the taxes on all distilled spirits entered for deposit into distillery or special bonded warehouses on and after the passage of this Act, shall be given by the distiller of said spirits as required by existing laws, conditioned, however, for payment of taxes at the rate imposed by this Act and before removal from warehouse and within eight years; as to fruit brandy, from the date of the original gauge, and as to all other spirits from the date of the original entry for deposit, and all warehousing bonds of transportation and warehousing bonds conditioned for the payment of the taxes on distilled spirits entered for deposit into distillery or special bonded warehouses prior to that date shall continue in full force and effect for the time named in said bonds, except where new or additional bonds are required under existing law.

Tax to be paid within eight years from date of original gauge, as to fruit brandy and as to other spirits from date of original entry for deposit.

Additional bonds.

New bonds.

The Commissioner of Internal Revenue may require the distillers of the spirits to give bonds for the additional tax, and before the expiration of the original bonds shall prescribe rules and regulations for reentry for deposit and for new bonds as provided for spirits originally entered for deposit under this Act, and conditioned for payment of tax at the rate imposed by this Act, and before removal of the spirits from warehouse, and within eight years; as to fruit brandy, from the date of the original gauge, and as to all other spirits from the date of original entry for deposit. If the distiller of the spirits fails or refuses to give the bond for the additional tax, or to reenter and rebond the spirits, the Commissioner of Internal Revenue may proceed to collect the tax as now provided by law for failure or refusal to give warehousing bonds on original entry into distillery warehouse or special-bonded warehouse, and the provisions of section four of the act of May twenty-eighth, eighteen hundred and eighty (twenty-first Statutes, one hundred and forty-five), so far as applicable, are hereby extended to

Proceedings in case of failure to give new bonds or additional bonds.

bonds given under the provisions of this section: *Provided*, That the distiller may, at his option and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, execute an annual bond for the spirits so deposited in lieu of the bonds herein provided.

Annual bonds.

Depositing spirits in a Government warehouse does not make them the property of the Government or cause them to be held at the risk of the bailee. (*Farrell v. United States*, 99 U. S. (9 Otto), 221; 25 Int. Rev. Rec., 83; Circuit Court decision, 24 Int. Rev. Rec., 231.)

Spirits destroyed in warehouse by fire or other casualty, abatement or refund of taxes on. (§ 3221, p. 106.)

Spirits destroyed during transportation from a distillery warehouse to a port of export. (Act of December 20, 1879, p. 207.)

Spirits destroyed during transportation from a distillery warehouse to a manufacturing warehouse. ([3433 b] § 15, Act of May 28, 1880, p. 296.)

Stockholders of a corporation engaged in distilling can not be accepted as sureties on the distillers' warehousing bond. (16 Op. Atty. Gen., 10; 24 Int. Rev. Rec., 153.)

Empty packages found in distillery warehouses. (28 Int. Rev. Rec., 189.)

Collection of tax on spirits not paid within the time fixed by the bond. (29 Int. Rev. Rec., 81; 30 *ibid.*, 141, 165, 253, 261, 309; 31 *ibid.*, 61, 197.)

Laches of officers does not relieve sureties. (See under § 3262.)

The stealing of spirits from warehouse by reason of the omission of the internal-revenue officers to provide sufficient locks is no defense to action on bond to pay tax due before removal. (*United States v. Witten*, 143 U. S., 76; 38 Int. Rev. Rec., 46.)

The destruction of spirits by fire in a warehouse constitutes a "removal" so as to make the tax payable before expiration of bonded period. (*United States v. Peace et al.* (1893), 53 Fed. Rep., 999.)

Withdrawal of spirits from warehouse by assignee. (Letter to Collector Mize, Oct. 14, 1895; 41 Int. Rev. Rec., 437.)

Suit should be first brought on warehousing bonds to recover tax on spirits before resort is had to the distiller's bond. (Vol. 1, Treas. Dec. (1899), No. 20920.)

SEC. 3294, as amended by section 5, act of March 1, 1879 (20 Stat., 327), and by section 5, act of May 28, 1880 (21 Stat., 145). Any distilled spirits may, on payment of the tax thereon, be withdrawn from warehouse on application to the collector of the district in charge of such warehouse, on making a withdrawal entry in duplicate, and in the following form:

Withdrawal from warehouse, entry for.

ENTRY FOR WITHDRAWAL OF DISTILLED SPIRITS FROM WAREHOUSE.

Tax paid.

Entry of distilled spirits to be withdrawn, on payment of the tax, from warehouse of distillery number —, situated in the — district of —, by —, deposited on the — day of —, anno Domini —, by —, in said warehouse.

And the entry shall specify the whole number of casks or packages, with the marks and serial numbers thereon, the number of gauge or wine gallons, and of proof gallons and taxable gallons, and the amount of the tax on the distilled spirits contained in them at the time they were deposited in the distillery warehouse; and said entry shall also specify the number of gauge or wine gallons, and of proof gallons, and taxable gallons contained in said casks or packages at the time

application shall be made for the withdrawal thereof; and on payment of the tax the collector shall issue his order to the storekeeper in charge of the warehouse for the delivery. One of said entries shall be filed in the office of the collector, and the other transmitted by him to the Commissioner of Internal Revenue.

Spirits with-
drawn from ware-
house may be re-
gauged.

[SEC. 3294a.] *Section 50, of the act of August 28, 1894. (28 Stat., 509.)*

That the distiller of any distilled spirits deposited in any distillery warehouse, or special-bonded warehouse, or in any general bonded warehouse established under the provisions of this Act may, prior to the expiration of four years from the date of original gauge as to fruit brandy, or original entry as to all other spirits, file with the collector a notice giving a description of the packages containing the spirits, and request a regauge of the same, and thereupon the collector shall direct a gauger to regauge the spirits, and to mark upon each such package the number of gauge or wine gallons and proof gallons therein contained. If upon such regauging it shall appear that there has been a loss of distilled spirits from any cask or package, without the fault or negligence of the distiller thereof, taxes shall be collected only on the quantity of distilled spirits contained in such cask or package at the time of the withdrawal thereof from the distillery warehouse or other bonded warehouse: *Provided, however,* That the allowance which shall be made for such loss of spirits as aforesaid shall not exceed one proof gallon for two months or part thereof; one and one-half gallons for three and four months; two gallons for five and six months; two and one-half gallons for seven and eight months; three gallons for nine and ten months; three and one-half gallons for eleven and twelve months; four gallons for thirteen, fourteen, and fifteen months; four and one-half gallons for sixteen, seventeen, and eighteen months; five gallons for nineteen, twenty, and twenty-one months; five and one-half gallons for twenty-two, twenty-three, and twenty-four months; six gallons for twenty-five, twenty-six, and twenty-seven months; six and one-half gallons for twenty-eight, twenty-nine, and thirty months; seven gallons for thirty-one, thirty-two, and thirty-three months; seven and one-half gallons for thirty-four, thirty-five, and thirty-six months; eight gallons for thirty-seven, thirty-eight, thirty-nine, and forty months; eight and one-half gallons for forty-one, forty-two, forty-three, and forty-four months; nine gallons for forty-five, forty-six, forty-seven, and forty-eight months; and no further allowance shall be made: *And provided further,* That in case such spirits shall remain in warehouse after the same have been regauged, the packages containing the spirits shall, at the time of withdrawal from warehouse and at such other times as the Commissioner of Internal Revenue may direct, be again regauged or inspected; and if found to contain a larger quantity than shown by the first regauge, the tax shall be collected and paid on the quantity contained in each such package as shown by the original gauge: *And provided further,* That taxes shall be collected on the quantity contained in each cask or package as shown by the original gauge, where the distiller does not request

Allowance for
leakage.

a regauge before the expiration of four years from the date of original entry or gauge: *Provided also*, That the foregoing allowance of loss shall apply only to casks or packages of a capacity of forty or more wine gallons, and that the allowance for loss on casks or packages of less capacity than forty gallons shall not exceed one-half the amount allowed on said forty-gallon cask or package; but no allowance shall be made on casks or packages of less capacity than twenty gallons: *And provided further*, That the proof of such distilled spirits shall not in any case be computed at the time of withdrawal at less than one hundred per centum.

Regauge of spirits in warehouse at date of act of August 28, 1894. (40 Int. Rev. Rec., 341.)

Regulations governing the short method of withdrawing spirits from internal revenue bonded warehouses. (Vol. 1, Treas. Dec. (1898), No. 18998, p. 294.)

Method of expediting withdrawing spirits from distillery warehouses in certain cases. (Vol. 1, Treas. Dec. (1898), No. 18778.)

Second regauge upon withdrawal of spirits from bonded warehouses by distillers—when required. (Vol. 1, Treas. Dec. (1898), No. 19061.)

Withdrawal of domestic spirits. When and how request for regauge of spirits in bond less than four years may be made. (Vol. 1, Treas. Dec. (1898), No. 19125.)

Explaining the provisions of section 50, act of August 28, 1894, as to the regauging of distilled spirits. (Circular No. 463, July 6, 1896; 42 Int. Rev. Rec., 297.)

Requiring collectors of internal revenue to certify to the authenticity of the signatures to requests for regauge of spirits under section 50. (Circular No. 468, August 29, 1896; 42 Int. Rev. Rec., 373.)

Description of packages of spirits in notice and request for regauge under section 50. (Circular Letter No. 474, April 2, 1897; 43 Int. Rev. Rec., 149.)

Excessive leakage. (Letter to Collector Yandell, September 18, 1897; 43 Int. Rev. Rec., 349.)

Extracting spirits from empty packages. (Vol. 1, Treas. Dec. (1898), No. 19191.)

No allowance can be made for additional outage occurring after the first regauge, even where the spirits are to be exported. (Vol. 1, Treas. Dec. (1898), No. 18994.)

[SEC. 3294*b*] SEC. 1. *Act of March 3, 1899 (30 Stat., 1349)*. That under the conditions and limitations imposed by section fifty of the Act of August twenty-eighth, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the support of the Government, and for other purposes," allowance for loss shall be made as to all distilled spirits produced and originally gauged for deposit prior to January first, eighteen hundred and ninety-nine, and which lawfully remain in any internal-revenue bonded warehouse, after the expiration of the period of forty-eight months from the date of original gauge: *Provided, however*, That the allowance for loss herein authorized shall not exceed nine and one-half gallons for forty-nine, fifty, fifty-one, and fifty-two months; ten gallons for fifty-three, fifty-four, fifty-five, and fifty-six months; ten and one-half gallons for fifty-seven, fifty-eight, fifty-nine, and sixty months; eleven gallons for sixty-one, sixty-two, sixty-three, and sixty-four months; eleven and one-half gallons for sixty-five, sixty-six, sixty-seven, and sixty-eight months; Allowance for loss.

twelve gallons for sixty-nine, seventy, seventy-one, and seventy-two months; twelve and one-half gallons for seventy-three, seventy-four, seventy-five, and seventy-six months; thirteen gallons for seventy-seven, seventy-eight, seventy-nine, and eighty months; and thirteen and one-half gallons for eighty-one, eighty-two, eighty-three, and eighty-four months, and no further allowance shall be made.

Allowance to
be ascertained
by regauge.

Time for re-
gauge.

SEC. 2. That the allowance for loss herein provided shall be ascertained by regauge on request of distiller before the expiration of eighty-four months from date of original gauge, and shall apply to spirits remaining in any internal-revenue bonded warehouse which shall have been regauged heretofore under the provisions of section fifty of the said Act of August twenty-eighth, eighteen hundred and ninety-four: *Provided*, That for the regauge of spirits originally gauged for deposit on or before the first day of March, eighteen hundred and ninety-two, the request of the distiller for a regauge under the provisions of this Act may be made at any time before the first day of May, eighteen hundred and ninety-nine.

Regauge of bonded spirits on request of distiller under the provisions of section 50, act of August 28, 1894, as amended by an act approved March 3, 1899. (Int. Rev. Circular No. 525, March 9, 1899; Vol. 1, Treas. Dec. No. 20836.)

When requests for regauge must be filed under act of March 3, 1899. If requests are seasonably filed no injury will result to distiller by reason of delay in regauge. (Vol. 1, Treas. Dec. (1899) No. 20948.)

Relating to excessive losses of distilled spirits in bonded warehouses. (Int. Rev. Circular No. 451, revised March 15, 1899; Vol. 1, Treas. Dec. (1899) No. 20872.)

Act of March 3, 1899, approved after midnight of that day. Extension of leakage allowance not applicable to spirits tax-paid March 3, 1899. (Vol. 1, Treas. Dec. (1899) No. 21173, May 23.)

The maximum allowance for each of the periods named in the case of a cask or package of 40 or more wine-gallons' capacity may be stated in tabular form as follows:

Not to exceed—

- 1 proof gallon for 2 months or part thereof.
- 1½ gallons for more than 2 months and not more than 4 months.
- 2 gallons for more than 4 months and not more than 6 months.
- 2½ gallons for more than 6 months and not more than 8 months.
- 3 gallons for more than 8 months and not more than 10 months.
- 3½ gallons for more than 10 months and not more than 12 months.
- 4 gallons for more than 12 months and not more than 15 months.
- 4½ gallons for more than 15 months and not more than 18 months.
- 5 gallons for more than 18 months and not more than 21 months.
- 5½ gallons for more than 21 months and not more than 24 months.
- 6 gallons for more than 24 months and not more than 27 months.
- 6½ gallons for more than 27 months and not more than 30 months.
- 7 gallons for more than 30 months and not more than 35 months.
- 7½ gallons for more than 35 months and not more than 36 months.
- 8 gallons for more than 36 months and not more than 40 months.
- 8½ gallons for more than 40 months and not more than 44 months.
- 9 gallons for more than 44 months and not more than 48 months.
- * 9½ gallons for more than 48 months and not more than 52 months.
- * 10 gallons for more than 52 months and not more than 56 months.
- * 10½ gallons for more than 56 months and not more than 60 months.
- * 11 gallons for more than 60 months and not more than 64 months.
- * 11½ gallons for more than 64 months and not more than 68 months.
- * 12 gallons for more than 68 months and not more than 72 months.
- * 12½ gallons for more than 72 months and not more than 76 months.
- * 13 gallons for more than 76 months and not more than 80 months.
- * 13½ gallons for more than 80 months and not more than 84 months.

The maximum allowance for loss on casks or packages of less capacity than 40 wine gallons and not less than 20 wine gallons is limited to one-half the amounts stated in the above table.

*Applicable only to spirits produced and originally gauged for deposit prior to January 1, 1899.

Fault or negligence in connection with loss of distilled spirits in bonded warehouses. (Circular No. 328; 35 Int. Rev. Rec., 190.)

Regulations concerning the tare of spirit packages. (Circular No. 530, April 24, 1899. Vol. 1, Treas. Dec. No. 21050.)

Circular No. 547, October 24, 1899, modifying above circular. (Vol. 2, Treas. Dec. No. 21690.)

GENERAL BONDED WAREHOUSES FOR DISTILLED SPIRITS OTHER THAN FRUIT BRANDY. ACT OF AUGUST 28, 1894. (28 Stat., 509.)

SEC. 51. That the Commissioner of Internal Revenue shall be, and is hereby, authorized, in his discretion and upon the execution of such bond as he may prescribe, to establish one or more warehouses, not exceeding ten in number in any one collection district, to be known and designated as general bonded warehouses, and to be used exclusively for the storage of spirits distilled from materials other than fruit, each of which warehouses shall be in the charge of a storekeeper or storekeeper and gauger to be appointed, assigned, transferred, and paid in the same manner as such officers for distillery warehouses are now appointed, assigned, transferred, and paid. Every such warehouse shall be under the control of the collector of internal revenue of the district in which such warehouse is located, and shall be in the joint custody of the storekeeper and proprietor thereof, and kept securely locked, and shall at no time be unlocked or opened or remain open except in the presence of such storekeeper or other person who may be designated to act for him, as provided in the case of distillery warehouses; and such warehouses shall be under such further regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Not over ten in one district.

In charge of storekeeper or storekeeper and gauger.

Under control of collector.

In joint custody of storekeeper and proprietor. Not to be unlocked or opened except, etc.

Regulations.

SEC. 52. That any distilled spirits made from materials other than fruit, and lawfully deposited in a distillery warehouse, may, upon application of the distiller thereof, be removed from such distillery warehouse to any general bonded warehouse established under the provisions of the preceding section; and the removal of said spirits to said general bonded warehouse shall be under such regulations, and after making such entries and executing and filing with the collector of the district in which the spirits were manufactured, such bonds and bills of lading, and the giving of such other additional security, as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

Distiller may remove spirits from distillery warehouse to general bonded warehouse.

SEC. 53. That all spirits intended for deposit in a general bonded warehouse, before being removed from the distillery warehouse, shall have affixed to each package an engraved stamp indicative of such intention, to be provided and furnished to the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner.

Stamp to be affixed before removal.

SEC. 54. That any spirits removed in bond as aforesaid may, upon its arrival at a general bonded warehouse, be deposited therein upon making such entries, filing such bonds and other securities, and under such regulations as

How spirits may be deposited in a general bonded warehouse.

Tax shall be paid within eight years from the date of original entry into distillery warehouse.

Only one withdrawal for transportation to another warehouse.

In such case additional stamp to be affixed.

Notices, entries, bonds, bills of lading, in case of transfer.

Bonds to be given by distillers, and may be renewed.

Exportation free of tax.

Transfers to manufacturing warehouse and for use of the United States or scientific institutions.

Loss by accidental fire.

Transfer from distillery warehouse to general bonded warehouse may be ordered by Commissioner of Internal Revenue when distillery warehouse contains less than 5,000 gallons and the distillery is under suspension six months in year, or if warehouse is unsafe or unfit for use, etc.

Provisions of section 3272, Revised Statutes, p. 164, made applicable.

shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. It shall be one of the conditions of the warehousing bond covering such spirits that the principal named in said bond shall pay the tax on the spirits as specified in the entry or cause the same to be paid within eight years from the date of the original entry of the same into the distillery warehouse, and before withdrawal, except as hereinafter provided.

SEC. 55. That any spirits may be withdrawn once and no more from one general bonded warehouse for transportation to another general bonded warehouse, and when intended to be so withdrawn, shall have affixed thereto another general bonded warehouse stamp indicative of such intention; and the withdrawal of such spirits, and their transfer to and entry into such general bonded warehouse shall be under such regulations and upon the filing of such notices, entries, bonds, and bill of lading as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, from time to time, prescribe; and the bonds covering spirits in general bonded warehouses shall be given by distillers of the spirits, and shall be renewed at such times as the Commissioner of Internal Revenue may, by regulations, require.

SEC. 56. That the provisions of existing law in regard to the withdrawal of distilled spirits from warehouses upon payment of tax, or for exportation, or for transfer to a manufacturing warehouse, and as to the gauging, marking, branding, and stamping of the spirits upon such withdrawals, and in regard to withdrawals for the use of the United States or scientific institutions or colleges of learning, including the provisions for allowance for loss by accidental fire or other unavoidable accident, are hereby extended and made applicable to spirits deposited in general bonded warehouses under this act.

Under section 56 of the act of August 28, 1894, providing for the establishment of general bonded warehouses, the provisions for allowance for loss by fire or other unavoidable accident do not extend to the case of such a loss while spirits are in transit from a distillery warehouse to a general bonded warehouse. (*Greenbrier Distillery Company v. Johnson*, 88 Fed. Rep., 638.)

SEC. 57. Whenever distilling shall have been suspended at any distillery for a period or periods aggregating six months during any calendar year, and the quantity of spirits remaining in the distillery warehouse does not exceed five thousand proof gallons, or whenever, in the opinion of the Commissioner of Internal Revenue, any distillery warehouse or general bonded warehouse is unsafe or unfit for use, or the merchandise therein is liable to loss or great wastage, he may in either such case discontinue such warehouse and require the merchandise therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe; and all the provisions of section thirty-two hundred and seventy-two of the Revised Statutes of the United States relating to transfers of spirits from warehouses, including those imposing penalties, are hereby made applicable to transfers to or from general bonded warehouses established under this act.

SEC. 58. The tax upon any distilled spirits removed from a distillery warehouse for deposit in a general bonded warehouse, and in respect of which any requirement of this act is not complied with, shall, at any time when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and upon the neglect of payment by the distiller shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law to enforce the payment of the tax. If it shall appear at any time that there has been a loss of distilled spirits from any cask or package deposited in a general bonded warehouse or special bonded warehouse, other than the loss provided for in section thirty-two hundred and twenty-one of the Revised Statutes of the United States, which, in the opinion of the Commissioner of Internal Revenue, is excessive, he may instruct the collector of the district in which the loss has occurred to require the withdrawal from warehouse of such cask or package of distilled spirits and to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, less only the allowance for loss provided by law. If the said tax is not paid on demand the collector shall report the amount due, as shown by the original gauge, upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected.

When tax may be assessed and collected by distraint.

In case of excessive loss in casks in warehouses Commissioner may direct collector to demand tax, and if tax unpaid may assess.

SEC. 59. That in case any distilled spirits removed from a distillery warehouse for deposit in a general bonded warehouse shall fail to be deposited in such general bonded warehouse within ten days after such removal, or within the time specified in any bond given on such removal, or if any distilled spirits deposited in any general bonded warehouse shall be taken therefrom, for export or otherwise, without full compliance with the provisions of this act, and with the requirements of any regulations made thereunder, and with the terms of any bond given on such removal, or if any distilled spirits which have been deposited in a general bonded warehouse shall be found elsewhere, not having been removed therefrom according to law, any person who shall be guilty of such failure, or any person who shall in any manner violate any provision of the next preceding eleven sections of this act, shall be subject, on conviction, to a fine of not less than one hundred dollars nor more than five thousand dollars, or to imprisonment for not less than three months nor more than three years for every such failure or violation; and the spirits as to which such failure or violation, or unlawful removal shall take place shall be forfeited to the United States.

Penal provisions as to offenses specified.

Regulations, Series 7, No. 20, relative to the establishment of general bonded warehouses, for the storage of spirits made from material other than fruit.

Supplement No. 1, relative to the bonding of distilled spirits in general bonded warehouses.

Gauging, stamp-
ing, and branding
spirits removed
from warehouse.

SEC. 3295. *Amended by act of July 16, 1892 (27 Stat., 201).* Whenever an order is received from the collector for the removal from any distillery warehouse of any cask of distilled spirits on which tax has been paid, the gauger by whom the same is gauged and inspected shall, in presence of the storekeeper and before such cask has left the warehouse, place upon the head thereof, in such manner as to cover no portion of any brand or mark prescribed by law already placed thereon, a stamp, on which shall be engraved the number of proof gallons contained in said cask on which the tax has been paid, and which shall state the serial number of the cask, the name of the person by whom the tax was paid, and the person to whom and the place where it is to be delivered. Said stamp shall be signed by the collector of the district, the storekeeper and gauger, and shall be as follows:

Tax-paid stamp, No. —.
Received _____, 18—, from _____, tax on _____
gallons proof spirit, cask No. _____, warehouse at _____,
for delivery to _____, at _____.

Collector — District, State of _____.

Attest: _____,

United States Storekeeper.

United States Gauger.

And at the time of affixing the tax-paid stamp the gauger shall, in the presence of the storekeeper, cut or burn upon each cask the name of the distiller, the district, the date of the payment of the tax, the number of proof-gallons, and the number of the stamp, which cutting or burning shall be erased when such cask is emptied.

The last words of section 3295, namely, "by cutting or burning a canceling line across such marks or brands," were struck out by amendatory act of July 16, 1892.

Alleged infringement of patent in the use of stamps. (*Fletcher v. Blake*, 27 Int. Rev. Rec., 6; *Hollister v. Benedict and Burnham Manufacturing Company*, 113 U. S., 59; 31 Int. Rev. Rec., 30.)

Regulations relative to the signing of stamps. (Series 7, No. 7, p. 98.)

Regulations concerning the affixing of stamps to heads of spirit packages. (Circular No. 535, May 26, 1899.)

In the case of spirit packages, the heads of which are in three parts, the Government stamp, or stamps, required to be placed upon the same, will be affixed across a joint, or joints, of the head in such a manner that each stamp shall rest over a joint at about the middle of the stamp, and so that the center piece of the head may not be removed without destroying the stamp or stamps. (Vol. 1, Treas. Dec., No. 21192.)

Regulations concerning reduction in proof of distilled spirits in distillers' original packages. (Int. Rev. Circular No. 536, May 26, 1899; Vol. 1, Treas. Dec. No. 21193, and Circular No. 542, Vol. 2, Treas. Dec. (1899), No. 21466.)

The tax-paid stamps issued by collectors for the payment of taxes on distilled spirits are nothing more than receipts, and are worthless as receipts to other parties than those to whom they are issued. (*Woolner v. United States*, 13 Ct. Clms., 355; 24 Int. Rev. Rec., 181.)

Removal, concealment, etc., of spirits contrary to law; penalty.

SEC. 3296. Whenever any person removes, or aids or abets in the removal of any distilled spirits on which the tax has not been paid, to a place other than the distillery warehouse

provided by law, or conceals or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of any distilled spirits from any distillery warehouse, or other warehouse for distilled spirits authorized by law, in any manner other than is provided by law, or conceals or aids in the concealment of any spirits so removed he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than two hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

Sections 3256, 3279, 3299, 3450, p. 342.

Aiding or abetting. (United States v. Blaisdell *et al.*, 9 Int. Rev. Rec., 82.)

Amendment No. 5, Constitution of United States, declaring that no one shall twice be put in jeopardy for the same offense, does not apply to proceedings *in rem*; and a conviction, therefore, under section 3296 is not a bar to proceedings under sections 3289, 3299, for the forfeiture of spirits found in unstamped packages, or in places other than distillery warehouses, to which they have been removed contrary to law.

A conviction, under section 3296, for removing distilled spirits to a place other than a distillery warehouse, or concealing them there contrary to law, is not a bar to a conviction under section 3281 for illicit distilling, because the same are different offenses; and the question of being twice in jeopardy, within the Constitution, amendment 5, does not arise. (United States v. Three Copper Stills, *etc.* (1890), 47 Fed. Rep., 495.)

The fact that the statute makes the aiding and abetting of another in the removal of illicit spirits a distinct offense does not prevent a person so aiding and abetting from being convicted as a principal in the removal, under the rule making all participants in misdemeanors liable as principals. (United States v. Sykes, 58 Fed. Rep., 1000.)

An indictment under this section for the concealment of distilled spirits on which the tax has not been paid, removed to a place other than the distillery warehouse provided by law, which charges the performance of that act at a particular time and place, and in the language of the statutes is sufficiently certain. (Pounds v. United States, 171 U. S., 35.)

See United States v. Smith, 27 Fed. Rep., 854.

Bond may be sued for these penalties. (United States v. Chouteau, 102 U. S., 603; 27 Int. Rev. Rec., 49.)

SEC. 3297. The Secretary of the Treasury is authorized to grant permits to any incorporated or chartered scientific institution or college of learning to withdraw alcohol in specified quantities from bond without payment of the internal-revenue tax on the same, or on the spirits from which the alcohol has been distilled, for the sole purpose of preserving specimens of anatomy, physiology, or natural history belonging to such institution, or for use in its chemical laboratory: *Provided*, That application for permits shall be made by the president or curator of such institution, who shall file a bond for double the amount of the tax on the alcohol to be withdrawn, with two good and sufficient sureties, to be approved by the Commissioner of Internal Revenue, and conditioned that the whole quantity of alcohol so withdrawn from bond shall be used for the purposes above specified, and for no other, and that the said president or curator shall comply with such other requirements and regulations as the Secretary of the Treasury may prescribe. And if any alcohol so obtained is used by any officer, as

Alcohol withdrawn for scientific purposes by incorporated or chartered institutions.

Penalty

aforesaid, of such institution for any purposes other than that above specified, then the said officer or sureties shall pay the tax on the whole amount of alcohol withdrawn from bond, together with a like amount as a penalty in addition thereto.

Alcohol is the only kind of spirit that can be used free of tax for scientific purposes. (Vol. 2, Treas. Dec. (1899), No. 21664.)

Alcohol with-
drawn for scien-
tific purposes by
institutions not
incorporated.

[SEC. 3297a]. *Act of May 3, 1878. (20 Stat., 48.)* That the Secretary of the Treasury be, and is hereby authorized to grant permits, as provided for in section thirty-two hundred and ninety-seven of the Revised Statutes of the United States passed at the first session of the Forty-third Congress, to any scientific university, or college of learning created and constituted such by any State or Territory under its laws, though not incorporated or chartered, upon the same terms and subject to the same restrictions and penalties, already provided by said section thirty-two hundred and ninety-seven: *Provided further*, That the bond required thereby may be executed by any officer of such university or college, or by any other person for it, and on its behalf, with two good and sufficient sureties, upon like conditions, and to be approved as by said section is provided.

See Appendix to Regulations, Series 7, No. 7, Revised, p. 200, and Revised Circular, July 14, 1898; Dept. No. 138, vol. 2, Treas. Dec., No. 19664.

Power of offi-
cers to detain
packages on sus-
picion.

SEC. 3298. It shall be lawful for any internal-revenue officer to detain any cask or package containing, or supposed to contain, distilled spirits, when he has reason to believe that the tax imposed by law upon the same has not been paid, or that the same is being removed in violation of law; and every such cask or package may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than forty-eight hours without process of law or intervention of the officer to whom such detention is to be reported.

Forfeiture of
spirits unlaw-
fully removed from
distillery.

SEC. 3299. All distilled spirits found elsewhere than in a distillery or *distillery* warehouse, not having been removed therefrom according to law, shall be forfeited to the United States.

Act Feb. 18, 1875.

If agent is cognizant of fraud at time of purchase, the principal is bound. Confusion and mixture of goods by rectification. (Harrington's Distilled Spirits, 11 Wall., 356; 13 Int. Rev. Rec., 193.)

Burden of proof. (§ 3333 p. 209. *United States v. Eight Casks of Whisky*, 7 Int. Rev. Rec., 4.)

Store-keeper
unlawfully re-
moving spirits or
allowing same to
be removed, etc.

SEC. 3300. Whenever any store-keeper or other person in the employment of the United States, having charge of a bonded warehouse, removes or allows to be removed therefrom any cask or other package, without an order or permit of the collector, or which has not been marked or stamped in the manner required by law, or removes or allows to be removed any part of the contents of any cask or package deposited therein, he shall be immediately dismissed from office or employment, and be fined not less than five hundred dollars nor more than two thousand dollars, and im-

Penalty.

prisoned not less than three months nor more than two years.

SEC. 3301, *as amended by section 5, act of March 1, 1879. (20 Stat., 327.)* Store-keepers' warehouse-books.
 Every storekeeper shall keep a warehouse book, which shall at all times be open to the examination of any revenue officer, and shall enter therein an account of all articles deposited in the warehouse to which he is assigned, indicating in each case the date of deposit, by whom manufactured or produced, the number and description of the packages and contents, the quantities therein, the marks and serial numbers thereon, and by whom gauged, inspected, or weighed, and if distilled spirits, the number of gauge or wine gallons, of proof-gallons, and of taxable gallons; and before delivering any article from the warehouse he shall enter in said book the date of the permit or order of the collector for the delivery of such articles, the number and description of the packages, the marks and serial numbers thereon, the date of delivery, to whom delivered, and for what purpose, which purpose shall be specified in the permit or order for delivery; and in case of delivery of any distilled spirits the number of gauge or wine gallons, of proof-gallons, and of taxable gallons shall also be stated; and such further particulars shall be entered in the warehouse-books as may be prescribed or found necessary for the identification of the packages, to insure the correct delivery thereof and proper accountability therefor.

And every store-keeper shall furnish daily to the collector of the district a return of all articles received in and delivered from the warehouse during the day preceding that on which the return is made, and mail at the same time a copy thereof to the Commissioner of Internal Revenue, and shall, on the first Monday of every month, make a report in duplicate of the number of packages of all articles, with the respective descriptions thereof, as above provided, which remained in the warehouse at the date of his last report, of all articles received therein and delivered therefrom during the preceding month, and of articles remaining therein at the end of said month. He shall deliver one of these reports to the collector having control of the warehouse, to be recorded and filed in his office, and transmit one to the Commissioner of Internal Revenue, to be recorded and filed in his office. Store-keepers' returns and reports.

The reports made by a distiller, or by storekeepers or other officers, to a collector under the internal-revenue laws are in no sense public records, but are executive documents, which the United States in its sovereign capacity has acquired for the sole purpose of administering its own governmental affairs, and are its private property, the custody and use of which the Secretary of the Treasury has the lawful authority to control by proper regulations. (*In re Comingore*, Collector (1899), 96 Fed. Rep., 552; Vol. 2, Treas. Dec., No. 21584.)

Method of adjusting in reports on Forms 87 and 94A, Part 1, for the current month, of certain errors in such reports found to have occurred in some previous month or months. (Circular No. 447, September 30, 1895; 41 Int. Rev. Rec., 409.)

SEC. 3302. The store-keeper assigned to any distillery warehouse shall, in addition to the duties required of him as store-keeper in charge of a warehouse, keep in a book to be provided for that purpose, and in the manner prescribed Store-keepers to have charge of distillery and keep accounts of materials used, etc.

by the Commissioner of Internal Revenue, a daily account of all the meal and vegetable productions or other substances brought into said distillery, or on said premises, to be used for the purpose of producing spirits, from whom purchased, and when delivered at said distillery; of the kind and quantity of all fuel used, and from whom purchased; of all repairs made on said distillery, and by whom and when made; of the names and places of residence of all persons employed in or about the distillery; of the materials put into the mash-tub or otherwise used for the production of spirits; of the time when any fermenting-tub is emptied of ripe mash or beer, recording the same by the number painted on said tub; and of all spirits drawn off from the receiving-cistern, and the time when the same were drawn off.

Distiller's
books, entries to
be made.

SEC. 3303. Every person who makes or distills spirits, or owns any still, boiler, or other vessel used for the purpose of distilling spirits, or who has such still, boiler, or other vessel so used under his superintendence, either as agent or owner, or who uses any such still, boiler, or other vessel, shall from day to day make, or cause to be made, in a book or books, to be kept by him in such form as the Commissioner of Internal Revenue may prescribe, a true and exact entry of the kind of materials, and the quantity in pounds, bushels, or gallons purchased by him for the production of spirits, from whom and when purchased, and by what conveyance delivered at said distillery, the amount paid therefor, the kind and quantity of fuel purchased for use in the distillery, and from whom purchased, the amount paid for ice or water for use in the distillery, the repairs placed on said distillery or distilling-apparatus, the cost thereof, and by whom and when made, and of the name and residence of each person employed in or about the distillery, and in what capacity employed. And in another book he shall make like entry of the quantity of grain or other material used for the production of spirits, the time of day when any yeast or other composition is put into any mash or beer for the purpose of exciting fermentation, the quantity of mash in each tub, designating the same by the number of the tub, the number of dry inches, that is to say, the number of inches between the top of each tub and the surface of the mash or beer therein at the time of yeasting, the gravity and temperature of the beer at the time of yeasting, and on every day thereafter its quantity, gravity, and temperature at the hour of twelve meridian; also, of the time when any fermenting-tub is emptied of ripe mash or beer, the number of gallons of spirits distilled, the number of gallons placed in the warehouse, and the proof thereof, the number of gallons sold or removed, with the proof thereof, and the name, place of business, and residence of the person to whom sold.

Books to be
open to inspec-
tion and preserv-
ed two years.

SEC. 3304. The books of every distiller hereinbefore required shall always be kept at the distillery and be always open to the inspection of any revenue officer, and, when filled up, shall be preserved by the distiller for a period of not less than two years thereafter, and whenever required shall be produced for the inspection of any revenue officer.

The books of a distiller required by law to be kept can be seized and used as evidence. "The United States have the right

to demand their production without judicial process for all purposes connected with the revenue liabilities of the distillers or the distilleries." (Waite, C. J., in the United States Circuit Court, Eastern District of Virginia. *United States v. A Distillery at Petersburg*, 1 Hughes, 533; 22 Int. Rev. Rec., 195.)

Distillers' books. Every book kept by a distiller is, to a certain extent, a Government book, and may, under the law, be rightfully examined by the revenue officers to determine its correctness. (*United States v. Parker, Mason & Co., and Roelle, Junker & Co.*, 21 Int. Rev. Rec., 245; 6 Biss., 350.)

SEC. 3305. Whenever any false entry is made in, or any entry required to be made is omitted from, either of the said books mentioned in the two preceding sections, with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto; or any distiller as aforesaid omits or refuses to provide either of said books, or cancels, obliterates, or destroys any part of either of such books, or any entry therein, with intent to defraud, or permits the same to be done, or such books, or either of them, are not produced when required by any revenue officer, the distillery, distilling-apparatus, and the lot or tract of land on which it stands, and all personal property on said premises used in the business there carried on, shall be forfeited to the United States. And every person who makes such false entry, or omits to make any entry hereinbefore required to be made, with the intent aforesaid, or who causes or procures the same to be done, or fraudulently cancels, obliterates, or destroys any part of said books, or any entry therein, or willfully fails to produce such books, or either of them, shall be fined not less than five hundred dollars, nor more than five thousand dollars, and imprisoned not less than six months, nor more than two years.

False entries, omitting to keep or produce books; penalty.

See *United States v. One Water Cask*, 10 Int. Rev. Rec., 93; *United States v. Stowell*, 133 U. S., 1; 36 Int. Rev. Rec., 30.)

SEC. 3306. Every person who knowingly uses any false weights or measures in ascertaining, weighing, or measuring the quantities of grain, meal, or vegetable materials, molasses, beer, or other substances to be used for distillation, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than one year nor more than three years. Any person who uses any molasses, beer, or other substance, whether fermented on the premises or elsewhere, for the purpose of producing spirits, before an account of the same is registered in the proper book provided for that purpose, shall forfeit and pay the sum of one thousand dollars for each offense so committed.

Using false weights or measures; penalty.

Using unregistered materials; penalty.

SEC. 3307. On the first day of each month, or within five days thereafter, every distiller shall render to the collector of the district an account in duplicate, taken from his books, stating the quantity and kind of materials used for the production of spirits each day, and the number of wine-gallons and of proof-gallons of spirits produced and placed in warehouse. And the distiller or the principal manager

Distillers' returns of production to collector.

of the distillery shall make and subscribe the following oath, to be attached to said return:

"I, ———, distiller (or principal manager, as the case may be) of the distillery at ———, do solemnly swear that, since the date of the last return of the business of said distillery, dated ——— day of ——— to ——— day of ———, both inclusive, there was produced in said distillery, and withdrawn and placed in warehouse, the number of wine-gallons and proof-gallons of spirits; and there were actually mashed and used in said distillery, and consumed in the production of spirits therein, the several quantities of grain, sugar, molasses, and other materials respectively hereinbefore specified, and no more."

One of the said duplicate returns shall be transmitted by the collector to the Commissioner of Internal Revenue.

Distillers' returns of the number of barrels distilled.

SEC. 3308. Every distiller shall make a return of the number of barrels of spirits distilled by him, counting forty gallons of proof-spirits to the barrel, whenever such return is demanded by the collector of the district.

Monthly examination of distillers' returns, assessments, etc.

SEC. 3309, *as amended*. On the receipt of the distiller's return in each month, the Commissioner of Internal Revenue shall inquire and determine whether the distiller has accounted for all the grain or molasses used, and all the spirits produced by him in the preceding month. If he is

Capacity tax.

satisfied that the distiller has reported all the spirits produced by him, and the quantity so reported is found to be less than eighty per centum of the producing-capacity of the distillery as estimated according to law, he shall make

Amendment made by sec. 12, act Mar. 3, 1875 (18 Stat., 402).

an assessment for such deficiency at the rate of *ninety* cents for every proof-gallon. In determining the quantity of grain used, fifty-six pounds shall be accounted as a bushel; and if the Commissioner finds that the distiller has used any grain or molasses in excess of the capacity of his distillery as estimated according to law, he shall make an assessment

Sec. 12, act Mar. 3, 1875 (18 Stat., 402). Amendment.

against the distiller at the rate of *ninety* cents for every proof-gallon of spirits that should have been produced from the grain or molasses so used in excess, which assessment shall be made whether the quantity of spirits reported is equal to or exceeds eighty per centum of the producing-capacity of the distillery. If the Commissioner finds that the distiller has not accounted for all the spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of spirits was actually produced by such

Sec. 12, act Mar. 3, 1875 (18 Stat., 402). Amendment.

distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced, at the rate of *ninety* cents for every proof-gallon: *Provided*, That the actual product shall be assumed to be in no case less than eighty per centum of the producing-capacity of the distillery as estimated according to law. All assessments made under this section shall be a lien on all distilled spirits on the distillery premises, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the tract of land whereon the said distillery is located, and any building thereon, from the time such assessment is made until the same shall have been paid.

It is well settled that a distiller is legally liable to a tax on his entire actual product, and on a quantity equal at least to 80 per centum of the producing capacity of his distillery as fixed by the survey, however small the actual product may be. (United States

v. Singer, 15 Wall., 111; 17 Int. Rev. Rec., 9. *Collector v. Beggs*, 17 Wall., 182; 17 Int. Rev. Rec., 164. *United States v. Ferrary et al.*, 93 U. S., 625; 22 Int. Rev. Rec., 394.)

Construction of the statute and method of computation. (*Stoll v. Pepper*, 97 U. S. (7 Otto), 438; 25 Int. Rev. Rec., 2. *Weitzel v. Rabe*, 103 U. S., 340. See also *United States v. Nissley*, 1 Dillon, 586; 13 Int. Rev. Rec., 174. *Pahlman v. Collector*, 20 Wall., 189; 19 Int. Rev. Rec., 171. *Turner v. Williams*, 18 Int. Rev. Rec., 6.)

In a suit for taxes under section 3309 the original assessment list signed by the Commissioner is evidence of assessment, and the original report of survey and certificate of collector of delivery of triplicate copy to distiller are competent evidence. (*United States v. Bristow*, 20 Fed. Rep., 378.)

If a distiller uses material for distillation in excess of the estimated capacity of his distillery according to the survey, but, in the regular course of his business, pays the tax upon his entire production, he can not be again assessed the regular gallon tax on the spirits which the excess of material used should have produced. (*Runkle v. Citizens' Insurance Company of Pittsburg, Pa.*, 6 Fed. Rep., 143.)

The provision under this section that if the Commissioner of Internal Revenue, on making a monthly examination of a distiller's return, "finds that the distiller has used any grain or molasses in excess of the capacity of his distillery as estimated according to law, he shall make an assessment against the distiller," etc., refers to the real average spirit-producing capacity of the distillery, and not to a fictitious capacity for any particular day or days. (*Chicago Distilling Company v. Stone*, 140 U. S., 647; 37 Int. Rev. Rec., 206.)

See on this section *Stowell v. Williams, jr.*, 17 Int. Rev. Rec., 38; *Daly v. United States*, 16 Int. Rev. Rec., 147; *Hartman v. Bean*, 99 U. S., 393; 25 Int. Rev. Rec., 141.

[SEC. 3309a.] *Section 6, act of March 1, 1879 (20 Stat., 327), amended by section 8, act of May 28, 1880 (21 Stat., 145).* That whenever, under the provisions of section thirty-three hundred and nine of the Revised Statutes, an assessment shall have been made against a distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law, or for the tax upon the spirits that should have been produced from the grain, or fruit, or molasses found to have been used in excess of the capacity of his distillery for any month, as estimated according to law, such excessive use of grain, or fruit, or molasses having arisen from a failure on the part of the distiller to maintain the capacity required by law to enable him to use such grain, or fruit, or molasses without incurring liability to such assessment, and it shall be made to appear to the satisfaction of the Commissioner of Internal Revenue that said deficiency, or that said failure, whereby such excessive use of grain, molasses, or fruit arose, was not occasioned by any want of diligence or by any fraudulent purpose, on the part of the distiller, but from misunderstanding as to the requirements of the law and regulations in that respect or by reason of unavoidable accidents, then, and in such case, the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury is authorized, on appeal made to him, to remit or refund such tax, or such part thereof as shall appear to him to be equitable and just in the premises.

Relief from assessments for deficiencies, etc., in certain cases.

And the Commissioner of Internal Revenue upon the production to him of satisfactory proof of the actual destruction, by accidental fire or other casualty, and without any fraud, collusion, or negligence of the distiller of any spirits in process

Accidental fire or other casualty.

of manufacture or distillation, or before removal to the distillery warehouse; shall not assess the distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law when the deficiency is occasioned by such destruction, nor shall he, in such case, assess the tax on the spirits so destroyed:

Provided, That no tax shall be remitted or refunded under the provisions of this section upon any assessment made prior to January first, eighteen hundred and seventy-four:

Distillers of fruit exempt from such assessments, except etc.

Provided further, That no assessment shall be charged against any distiller of fruit for any failure to maintain the required capacity, unless the Commissioner shall, within six months after his receipt of each monthly report notify such distiller of such failure so to maintain the required capacity.

Circular No. 317. Relief in case of assessments proposed under section 3309. (34 Int. Rev. Rec., 181.)

Statutory relief in case of assessments under this section. (Department No. 90, Circular No. 317, revised August 28, 1889, 35 Int. Rev. Rec., 277; 37 Int. Rev. Rec., 237.)

Rate of tax.

[SEC. 3309b.] *Section 60, act of August 28, 1894 (28 Stat., 509). That all assessments made under the provisions of section thirty-three hundred and nine of the Revised Statutes of the United States, and Acts amendatory thereof, shall be at the rate of tax imposed by this Act on each proof gallon.*

Fermenting period.

SEC. 3310, as amended by act of February 27, 1877 (19 Stat., 240), and section 7, act of May 28, 1880 (21 Stat., 145.) *The first fermenting period of every distiller shall be taken to begin on the day the distiller's bond is approved; and every distiller at the hour of twelve meridian on the last day of such fermenting period, or at the same hour on any previous day of such fermenting period on which spirits are distilled, shall be deemed to have commenced, and thereafter to be continuously engaged in, the production of distilled spirits in his distillery, except in the intervals when he shall suspend work as hereinafter provided.*

Suspension of work.

Any distiller desiring to suspend work in his distillery may give notice in writing to the collector of the district, stating when he will suspend work; and on the day mentioned in said notice said collector or one of his deputies shall, at the expense of the distiller, proceed to fasten securely the door of every furnace of every still or boiler in said distillery, by locks and otherwise, and shall adopt such other means as the Commissioner of Internal Revenue may prescribe to prevent the lighting of any fire in such furnace or under such stills or boilers. The locks and seals, and other materials required for such purpose, shall be furnished to the collector by the Commissioner of Internal Revenue, to be duly accounted for by said collector. Such notice by any distiller, and the action taken by the collector in pursuance thereof, shall be immediately transmitted to the Commissioner of Internal Revenue. No distiller, after having given such notice, shall, after the time stated therein, carry on the business of a distiller on said premises until he gives another notice in writing to said collector, stating the time when he will resume work; and at the time so stated for resuming work the collector or one of his deputies shall attend at the distillery to remove said locks and

other fastenings; and thereupon, and not before, work may be resumed in said distillery, which fact shall be immediately reported to the collector of the district, and by him transmitted to the Commissioner of Internal Revenue.

Every distiller who, after the time fixed in said notice declaring his intention to suspend work, carries on the business of a distiller on said premises, or has mash, wort, or beer in his distillery, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on said premises, shall incur the forfeitures and be subject to the same punishment as provided for persons who carry on the business of a distiller without having given the bonds required by law.

Carrying on business after notice of suspension.

Penalties; sec. 3260, p. 155.

But nothing in this section shall be held to apply to suspensions caused by *unavoidable* accident; and the Commissioner of Internal Revenue shall prescribe regulations to govern such cases of involuntary suspension.

Suspensions caused by unavoidable accidents. Verbal amendment. Act Feb. 27, 1877.

A distiller has one full fermenting period to prepare his mash or beer for distillation, and the liability to the 80 per cent capacity commences on the last day of such period, or on any previous day on which spirits are distilled. (Series 7, No. 7 Revised, p. 50.)

When a nominal change shall occur at a distillery, by reason of a change in the name or style in which the operations at the distillery are conducted, it will not be required that the business of producing spirits shall be completely finished and operations suspended by the distiller desiring to change his name or style before the business shall be undertaken or begun by him under a different name or style; nor will he be required to give notice of suspension upon Form 124. (Circular No. 524, March 8, 1899; Vol. 1, Treas. Dec., No. 20835.)

SEC. 3311. Whenever any distiller desires to reduce the producing-capacity of his distillery, he shall give notice of such intention, in writing, to the collector, stating the quantity of spirits which he desires thereafter to manufacture or produce every twenty-four hours, and thereupon said collector shall proceed, at the expense of the distiller, to reduce and limit the producing-capacity of the distillery to the quantity stated in said notice, by placing upon a sufficient number of the fermenting-tubs close-fitting covers, which shall be securely fastened by nails, seals, and otherwise, and in such manner as to prevent the use of such tubs without removing said covers or breaking said seals, and shall adopt such other precautions as may be prescribed by the Commissioner of Internal Revenue to reduce the capacity of said distillery.

Reduction of capacity.

And every person who breaks, injures, or in any manner tampers with any lock, seal, or other fastening applied to any furnace, still, or fermenting-tub, or other vessel, in pursuance of the provisions of law, or who opens or attempts to open any door, tub, or other vessel, which is locked or sealed, or otherwise closed or fastened as herein provided, or who uses any furnace, still, or fermenting-tub, or other vessel, which is so locked, sealed, or fastened, shall be deemed guilty of a felony, and shall be fined not less than one thousand dollars nor more than five thousand dollars,

Tampering with locks, etc.; penalty.

and imprisoned for not less than one year nor more than three years.

Weitzel v. Rabe, 103 U. S., 340.

Stamps, how prepared and issued.

SEC. 3312. All stamps required for distilled spirits shall be engraved in their several kinds in book-form, and shall be issued by the Commissioner of Internal Revenue to any collector, upon his requisition, in such numbers as may be necessary in the several districts. Each stamp shall have an engraved stub attached thereto, with a number thereon corresponding with an engraved number on the stamp, and the stub shall not be removed from the book. And there shall be entered on each stub such memoranda of the contents of its corresponding stamp as shall be necessary to preserve a perfect record of the use of such stamp when detached.

Traffic in and possession of internal-revenue stamps. (11 Int. Rev. Rec., 57.)

Counterfeiting stamps. (§ 5414, Appendix, p. 392.)

Stamps, form of, how used.

SEC. 3313. On every stamp for the payment of tax on distilled spirits there shall be engraved words and figures representing a decimal number of gallons, and on the stub corresponding to such stamp there shall be engraved a similar number of gallons, and between the stamp and the stub, and connecting them, shall be engraved nine coupons, which, beginning next to the stamp, shall indicate in succession the several numbers of gallons between the number named in the stamp and the decimal number next above. And whenever any collector receives the tax on the distilled spirits contained in any cask, he shall detach from the book a stamp representing the denominate quantity nearest to the quantity of proof-spirits in such cask, as shown by the gauger's return, with such number of the coupons attached thereto as shall be necessary to make up the whole number of proof-gallons in said cask; * * * All unused coupons shall remain attached to the marginal stub, and no coupon shall have any value or significance when detached from the stamp and stub. And the tax-paid stamps with the coupons may denote such number of gallons, not less than twenty [*ten*], as the Commissioner of Internal Revenue may deem advisable.

Part indicated by * * * obsolete. Sec. 43, act of August 28, 1894. See sec. 3251, p. 146.

Fractional gallons. (See § [3251 a], p. 147.)

The act of May 23, 1880, amending section 3287, p. 172, provided for original packages of a distiller of not less than 10 wine gallons capacity, thus modifying the last clause of the above section without specifically amending it.

The tax-paid stamps issued by collectors for the payment of taxes on spirits are nothing more than receipts, and are worthless as receipts to other parties than those to whom they are issued. (*A. & S. Woolner v. United States*, 13 Ct. Clms. 355; 24 Int. Rev. Rec., 181.)

Tax-paid spirit stamps containing coupons for the fractional parts of a gallon. (Circular Letter of December 21, 1894; 40 Int. Rev. Rec., 405.)

SEC. 3314, amended by act of March 1, 1879 (20 Stat., 327), and by

Accountability section. 16, act of May 23, 1880 (21 Stat., 145). The books of tax-paid stamps issued to any collector shall be charged to his

account at the full value of the tax on the number of gallons represented on the stamps and coupons contained in said books; and every collector shall make a monthly return to the Commissioner of Internal Revenue of all tax-paid stamps issued by him to be affixed to any cask or package containing distilled spirits on which the tax has been paid, and account for the amount of the tax collected; and when the said collector returns to the Commissioner of Internal Revenue any book of marginal stubs, which it shall be his duty to do as soon as all the stamps contained in the book when issued to him have been used, and accounts for the tax on the number of gallons represented on the stamps and coupons that were contained in said book, there shall be allowed to the collector a commission of one-half of one per centum on the amount of such tax, in addition to any other commission by law allowed: *Provided*, That the total net compensation of collectors as fixed by this title shall not be thereby increased. All stamps relating to distilled spirits, other than the tax-paid stamps, shall be charged to collectors; and the books containing such stamps may be intrusted by any collector to the gauger of the district, who shall make a daily report to the collector of all such stamps used by him and for whom used; and when all the stamps contained in any such book have been issued, the gauger of the district shall return the book to the collector, with all the marginal stubs therein: *Provided*, That all export stamps issued to collectors shall be charged to them as representing the value of ten cents for each stamp, and they shall collect the amount due for such stamps at the rate of ten cents for each stamp issued in such manner and at such time as the Commissioner of Internal Revenue may prescribe, and the Commissioner may, in his discretion, make assessment therefor.

Commissions.

Export stamps.

As to spirits in wooden packages, each containing two or more metallic cans, each having a capacity of not less than 5 gallons, wine measure, 5 cents each (§ 3287, as amended, p. 172).

The act of May 28, 1880, amending section 3314, repealed the provision charging 10 cents for stamps other than tax-paid and export stamps.

In *United States v. Landram* (118 U. S., 81; 32 Int. Rev. Rec 151), it was held that the right of collectors to commissions on taxes collected by the sale of tax-paid spirit stamps was not taken from them by section 2, act of March 1, 1879 (§ 3148, amended, p. 62).

Circular No. 306. Collectors' commissions on sale of tax-paid spirit stamps (32 Int. Rev. Rec., 325).

SEC. 3315, as amended by section 5, act of March 1, 1879 (20 Stat., 327). The Commissioner of Internal Revenue may, under regulations prescribed by him with the approval of the Secretary of the Treasury, issue stamps for restamping packages of distilled spirits, tobacco, cigars, snuff, cigarettes, and fermented liquors which have been duly stamped, but from which the stamps have been lost or destroyed by unavoidable accident.

Restamping
tax-paid spirits,
tobacco, cigars,
snuff, cigarettes,
and fermented
liquors.

Redemption of stamps (§ 3426, p. 293).

Restamping packages of spirits, tobacco, cigars, snuff, cigarettes, and fermented liquors (Department No. 69, Circular No. 240, revised May 9, 1893; 39 Int. Rev. Rec., 157).

Officer using, or issuing, or permitting use of stamps contrary to law.

SEC. 3316. Whenever any revenue officer affixes or cancels, or causes or permits to be affixed or canceled, any stamp relating to distilled spirits provided for by law, in any other manner or in any other place, or issues the same to any other person than as provided by law, or by regulation made in pursuance thereof, or knowingly affixes, or permits to be affixed, any such stamp to any cask or package of spirits of which the whole or any part has been distilled, rectified, compounded, removed, or sold, in violation of law, or which has in any manner escaped payment of tax due thereon, he shall, for every such offense, be fined not less than five hundred dollars nor more than three thousand dollars, and be imprisoned for not less than six months nor more than three years.

Penalty.

Affixing imitation stamp on packages of distilled spirits.

[**SEC. 3316a.**] *Section 17, act February 8, 1875 (18 Stat., 307).* That if any person shall affix, or cause to be affixed, to or upon any cask or package containing, or intended to contain, distilled spirits, any imitation stamp or other engraved, printed, stamped, or photographed label, device, or token, whether the same be designed as a trade mark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of, or shall have the resemblance or general appearance of, any internal-revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits, he shall, for each offense, be liable to a penalty of one hundred dollars, and, on conviction, shall be fined not more than one thousand dollars, and imprisoned not more than three years, and the cask or package with its contents shall be forfeited to the United States.

Penalty.

' Rectifiers' returns.

SEC. 3317, as amended by section 5, act of March 1, 1879 (20 Stat., 327). That on or before the tenth day of each month every person engaged in rectifying or compounding distilled spirits shall make, in such form as may be prescribed by the Commissioner of Internal Revenue, a return to the collector of the district, showing the quantity of spirits received for rectification, and from whom received, the quantity dumped for rectification, the quantity rectified, the quantity removed after rectification during the preceding month, and giving such other information as may be required by the Commissioner of Internal Revenue, such return to be made in duplicate and sworn to by the rectifier; and the collector shall forward one of such returns to the Commissioner of Internal Revenue.

' Rectifiers intending to defraud.

Every person who engages in, or carries on, the business of a rectifier with intent to defraud the United States of the tax on the spirits rectified by him, or any part thereof, or with intent to aid, abet, or assist any person or persons in defrauding the United States of the tax on any distilled spirits, or who shall purchase or receive or rectify any distilled spirits which have been removed from a distillery to a place other than the distillery-warehouse provided by law, knowing or having reasonable grounds to believe that the tax on said spirits, required by law, has not been paid, shall, for every such offense, be fined not less than one thousand dollars nor more than five thousand dollars, and

Penalties.

imprisoned not less than six months nor more than two years.

As to employee swearing to returns. (32 Int. Rev. Rec., 165.)

[SEC. 3317a.] *Amended by act of July 16, 1892 (27 Stat., 200).* Rectifiers' notice of intention to rectify.
When any rectifier intends to rectify or compound any distilled spirits he shall, before emptying any package of distilled spirits for that purpose, give notice in duplicate to the collector of internal revenue for the district of his intention so to rectify, and submit such package for the inspection of a United States gauger, who shall duly weigh or gauge such package and its contents and make due return thereof, and such spirits shall not be emptied for rectification, nor rectified or compounded in the package, until gauged or weighed as herein above provided. And such notice and return shall be made in such form and contain such particulars as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe. Gauging.

Penalty. (See § 3456, p. 345.)

Regulations concerning marking, reporting, and accounting for sweetened spirits at rectifying houses. (Circular No. 556, March 9, 1900; Vol. 3, Treas. Dec. (1900), Int. Rev., No. 68.)

SEC. 3318 *as amended.* Every rectifier and wholesale liquor-dealer shall provide a book, to be prepared and kept in such form as may be prescribed by the Commissioner of Internal Revenue, and shall, on the same day on which he receives any foreign or domestic spirits, and before he draws off any part thereof, or adds water or anything thereto, or in any respect alters the same, enter in such book, and in the proper columns respectively prepared for the purpose, the date when, the name of the person or firm from whom, and the place whence the spirits were received, by whom distilled, rectified, or compounded, and when and by whom inspected, and, if in the original package, the serial number of each package, the number of wine-gallons and proof-gallons, the kind of spirit, and the number and kind of adhesive stamps thereon. And every such rectifier and wholesale dealer shall, at the time of sending out of his stock or possession any spirits, and before the same are removed from his premises, enter in like manner in said book the day when and the name and place of business of the person or firm to whom such spirits are to be sent, the quantity and kind or quality¹ of such spirits, the number of gallons and fractions of a gallon at proof, and, if in the original packages in which they were received, the name of the distiller and the serial number of the package. Every such book shall be at all times kept in some public or open place on the premises of such rectifier or wholesale dealer for inspection, and any revenue officer may examine it and take an abstract therefrom; and when it has been filled up as aforesaid, it shall be preserved by such rectifier or wholesale liquor-dealer for a period not less than two years; and during such time it shall be produced by him to every revenue officer demand ing it. Books to be kept by rectifiers and wholesale dealers.

¹This word "quality" is erroneously printed "quantity" in the Revised Statutes, "edition of 1878."

Penalties.

Act Feb. 27,
1877.

And whenever any rectifier or wholesale liquor-dealer refuses or neglects to provide such book, or to make entries therein as aforesaid, or cancels, alters, obliterates, or destroys any part of such book, or any entry therein, or makes any false entry therein, or hinders or obstructs any revenue officer from examining such book, or making any entry therein, or taking any abstract therefrom; or whenever such book is not preserved or is not produced by any rectifier or wholesale liquor-dealer as hereinbefore directed, he shall pay a penalty of one hundred dollars, and shall on conviction be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

Sec. 5, act Mar.
1, 1879. (20 Stat.,
327.)

Transcripts.

That every person required to keep the books prescribed by this section shall, on or before the tenth day of each month, make a full and complete transcript of all entries made in such book during the month preceding, and, after verifying the same by oath, shall forward the same to the collector of the district in which he resides. Any failure by reason of refusal or neglect to make said transcripts shall subject the person so offending to a fine of one hundred dollars for each neglect or refusal.

Penalty.

Law construed and applied. (United States v. Malone, 8 Ben., 574; 22 Int. Rev. Rec., 403.)

Importers must keep the wholesale liquor dealers' book. (United States v. McCullough, 22 Int. Rev. Rec., 202.)

Recovery of penalty of \$100 in a civil action no bar to criminal proceedings. (Case of Leszynsky, 25 Int. Rev. Rec., 71; 16 Blatch., 9.)

The duty of making entries in the book may be delegated to a clerk, but the dealers and rectifiers are responsible if the proper entries are not made. (United States v. 50 Barrels Whisky, 11 Int. Rev. Rec., 94.)

Oath should be made by the principal, instead of employee. (32 Int. Rev. Rec., 165.)

Distiller re-
quired to keep
book. Sec. 3318,
R. S.

[SEC. 3318a.] *Section 62, act of August 28, 1894 (28 Stat., 509).*

That no distiller who has given the required bond and who sells only distilled spirits of his own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed, shall be required to pay the special tax of a wholesale liquor dealer on account of such sales: *Provided*, That he shall be required to keep the book prescribed by section thirty-three hundred and eighteen of the Revised Statutes of the United States, or so much as shall show the date when he sent out any spirits, the serial numbers of the packages containing same, the kind and quality of the spirits in wine gallons and taxable gallons, the serial numbers of the stamps on the packages, and the name and residence of the person to whom sent; and the provisions of section five of an Act entitled "An Act to amend the laws relating to internal revenue" approved March fifth, eighteen hundred and seventy-nine, as to transcripts, shall apply to such books. Any failure, by reason of refusal or willful neglect, to furnish the transcript by him shall subject the spirits owned or distilled by him to forfeiture.

Purchase of
quantities great-
er than 20 gal-
lons from one per-
son, etc.

SEC. 3319. It shall not be lawful for any rectifier of distilled spirits, or wholesale or retail liquor-dealer, to purchase or receive any distilled spirits in quantities greater than twenty gallons from any person other than an authorized

rectifier of distilled spirits, distiller, or wholesale liquor-dealer. Every person who violates this section shall forfeit and pay one thousand dollars: *Provided*, That this provision shall not be held to apply to judicial sales, or to sales at public auction made by an auctioneer.

Penalty.

The exception made in this proviso is extended to certain other sales by section 4, act of March 1, 1879, amending section 3244, paragraph 5, p. 125.

If a rectifier purchases from an authorized distiller, who is not an authorized rectifier or an authorized wholesale liquor dealer, distilled spirits, in quantities greater than 20 gallons, which were not produced by such authorized distiller, such purchaser is liable to the penalty imposed by section 3319. (The New York Rectifying Company v. United States, 14 Blatch., 549.)

Held, That the word "receive," as used in this section, means receive for sale, and that where a retail dealer receives more than 20 gallons of spirits from any person other than one authorized by the act to sell such spirits, for storage only, and not for sale, he does not incur the penalty. (United States v. Fridenberg, 11 Int. Rev. Rec., 5.)

SEC. 3320, as amended by act of July 16, 1892 (27 Stat., 185), and as further amended by section 66, act of August 28, 1894 (28 Stat., 509). Gauging and stamping of rectified spirits.

Whenever any cask or package, containing five wine gallons or more, is filled for shipment, sale, or delivery on the premises of any rectifier who has paid the special tax required by law, it shall be inspected and gauged by a United States gauger whose duty it shall be to mark and brand the same and place thereon an engraved stamp, which shall state the date when affixed and the number of proof gallons, and shall be in such form as shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury: *Provided*, That when such cask or package is filled on the premises of a rectifier rectifying less than five hundred barrels a year, counting forty gallons of proof spirits to the barrel, it may be gauged, marked, branded, and stamped by a United States ganger, or it may be gauged, marked, branded, and stamped by the rectifier, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe.

Rectified spirits stamps must be signed by gaugers on the date they affixed them. (40 Int. Rev. Rec., 413.)

Regulations concerning the gauging and marking of distilled spirits at rectifying houses. (Circular No. 529, April 20, 1899; vol. 1, Treas. Dec. No. 21047.)

Gauging at rectifying houses.—Objection will not be made to the use of the gauging rod for the inspection of spirits put up in large casks for bottling on rectifiers' premises. (Vol. 1, Treas. Dec. (1899), No. 21281.)

Gauging certain packages at rectifying houses.—Extension of ruling contained in Treasury decision 21281. (See Circular 529, vol. 2, Treas. Dec. (1899), No. 21450.)

Change in method in accounting for "no proof" and "apparent proof" spirits at rectifying houses. (Vol. 3, Treas. Dec. (1900), Int. Rev., No. 16.)

SEC. 3321, relative to gauging and stamping spirits on premises of wholesale dealer, repealed by legislative, executive, and judicial appropriation act of August 15, 1876. (19 Stat., 152.)

SEC. 3322. All blanks in any of the forms prescribed in the preceding sections shall be duly filled in accordance with the facts in each case. And the stamps therein designated

Filling blanks. Affixing and varnishing stamps.

shall in every case be affixed to a smooth surface of the cask or other package, which surface shall not have been previously painted or covered with any substance, and so as to fasten the same securely to the cask or package, and shall be duly canceled, and shall then be immediately covered with a coating of transparent varnish, or other substance, so as to protect them from removal or damage by exposure; and such affixing, cancellation, and covering shall be done in such manner as the Commissioner of Internal Revenue may by regulation prescribe.

Wholesale
Liquor dealers to
mark, brand, and
stamp packages.

SEC. 3323, as amended by the act of July 16, 1892. (27 Stat., 200.) Every package of distilled spirits containing five wine gallons or more, filled on the premises of a wholesale liquor dealer, who has paid the special tax required by law, shall be marked, branded, and stamped by such wholesale liquor dealer in such manner and under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe; and on or before the tenth day of each month every wholesale liquor dealer shall make return, under oath, to the collector of internal revenue for the district of the various kinds and quantities of each kind and of the total quantities of distilled spirits received on his premises and of the various kinds and quantities of each kind and of the total quantity of distilled spirits sent out from his stock or possession during the preceding month, and of the quantity of each kind and the total quantity remaining on hand at the end of the month; and such return shall be made in such form and contain such other particulars as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. And every rectifier or wholesale liquor dealer who refuses or willfully neglects to comply with the requirements of this act as to giving the said notice or the said return, and as to marking, branding, and stamping, in accordance with the law and the regulations made in pursuance thereof, the packages of spirits filled on his premises as aforesaid, shall, for each such offense, be fined not less than two hundred dollars nor more than one thousand dollars.

Returns.

Form.

Penalty.

See section 3289, p. 173.

Supplement to Circular No. 536, reduction in proof of distilled spirits in distillers' original packages. (Circular No. 542, August 1, 1899; vol. 2, Treas. Dec., No. 21466.)

Stamps and
brands to be ef-
faced from empty
casks.

Penalties for
omitting to efface
and for transpor-
tation in viola-
tion of law.

SEC. 3324. Every person who empties or draws off, or causes to be emptied or drawn off, any distilled spirits from a cask or package bearing any mark, brand, or stamp, required by law, shall, at the time of emptying such cask or package, efface and obliterate said mark, stamp, or brand. Every such cask or package from which said mark, brand, or stamp is not effaced and obliterated as herein required, shall be forfeited to the United States, and may be seized by any officer of internal revenue wherever found. And every railroad company or other transportation company, or person who receives or transports, or has in possession with intent to transport, or with intent to cause or procure to be transported, any such empty cask or package, or any part

thereof, having thereon any brand, mark, or stamp, required by law to be placed on any cask or package containing distilled spirits, shall forfeit three hundred dollars for each such cask or package, or any part thereof, so received or transported, or had in possession with the intent aforesaid; and every boat, railroad-car, cart, dray, wagon, or other vehicle, and all horses and other animals used in carrying or transporting the same shall be forfeited to the United States. Every person who fails to efface and obliterate said mark, stamp, or brand, at the time of emptying such cask or package, or who receives any such cask or package, or any part thereof, with the intent aforesaid, or who transports the same, or knowingly aids or assists therein, or who removes any stamp provided by law from any cask or package containing, or which had contained, distilled spirits, without defacing and destroying the same at the time of such removal, or who aids or assists therein, or who has in his possession any such stamp so removed as aforesaid, or has in his possession any canceled stamp, or any stamp which has been used, or which purports to have been used, upon any cask or package of distilled spirits, shall be deemed guilty of a felony, and shall be fined not less than five hundred dollars nor more than ten thousand dollars, and imprisoned not less than one year nor more than five years.

As to empty imported spirit packages, see act of March 1, 1879, as amended, p. 215.

It is of no consequence under this section what the intent of the person failing to obliterate stamp is. There is no discretion given to the court whether to fine or imprison for the offense. The offender must be fined and also imprisoned. (*United States v. Quantity of Distilled Spirits*, 3 Ben., 552; 11 Int. Rev. Rec., 3.)

Principal liable for failure of employee to obliterate stamps. (*United States v. Adler & Furet*, 21 Int. Rev. Rec., 316.)

The emptying of a cask without destroying stamp by the wife of a retail liquor dealer, who acts for her husband, renders the latter liable to the penalty.

It is well settled that where a master, owing a certain duty to the public, intrusts its performance to a servant, he is responsible criminally for failure of servant to discharge the duty, if nonperformance of the duty is a crime. (*United States v. Buchanan* (1881), 4 Hughes, 487; 9 Fed. Rep., 689.)

Indictment for removing stamps from casks containing distilled spirits. (*United States v. Bayaud et al.*, 16 Fed. Rep., 376; 21 Blatch., 287.)

SEC. 3325. Whenever any person knowingly purchases or sells, with inspection-marks thereon, any cask or package, after the same has been used for distilled spirits, he shall forfeit and pay the sum of two hundred dollars for every such cask so purchased or sold.

Buying or selling spirit casks having inspection marks.

Penalty.

SEC. 3326. Whenever any person changes or alters any stamp, mark, or brand on any cask or package containing distilled spirits, or puts into any cask or package spirits of greater strength than is indicated by the inspection-mark thereon, or fraudulently uses any cask or package having any inspection-mark or stamp thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected therein, he shall forfeit and pay the sum of two hundred dollars for every cask or package on which the stamp or mark is so changed or

Changing or altering spirit marks or brands. Shifting spirits, etc.

Penalty.

altered, or which is so fraudulently used, and shall be fined for each such offense not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than one month nor more than one year.

United States v. Bardenheier, 49 Fed. Rep., 846.

Removal of spirits from distillery or rectifier's premises before sunrise and after sunset.

SEC. 3327. No person shall remove any distilled spirits at any other time than after sun-rising and before sun-setting in any cask or package containing more than ten gallons from any premises or building in which the same may have been distilled, redistilled, rectified, compounded, manufactured, or stored; and every person who violates this provision shall be liable to a penalty of one hundred dollars for each cask, barrel, or package of spirits so removed; and said spirits, together with any vessel containing the same, and any horse, cart, boat, or other conveyance used in the removal thereof, shall be forfeited to the United States.

Penalty.

Forfeiture.

Tax on imitations of wines; how paid.

SEC. 3328. On all wines, liquors, or compounds known or denominated as wine, and made in imitation of sparkling wine or champagne, but not made from grapes grown in the United States, and on all liquors, not made from grapes, currants, rhubarb, or berries grown in the United States, but produced by being rectified or mixed with distilled spirits or by the infusion of any matter in spirits, to be sold as wine, or as a substitute for wine, there shall be levied and collected a tax of ten cents per bottle or package containing not more than one pint, or of twenty cents per bottle or package containing more than one pint and not more than one quart, and at the same rate for any larger quantity of such merchandise, however the same may be put up, or whatever may be the package. The Commissioner of Internal Revenue shall cause to be prepared suitable and special stamps denoting the tax herein imposed, to be affixed to each bottle or package containing such merchandise, by the person manufacturing, compounding, or putting up the same, before removal from the place of manufacture, compounding, or putting up; and said stamps shall be affixed and canceled in such manner as the Commissioner may prescribe; and the absence of such stamp from any bottle or package containing such merchandise shall be prima facie evidence that the tax thereon has not been paid, and such merchandise shall be forfeited to the United States.

Counterfeiting, altering, -or re-using stamps. Penalties.

Any person counterfeiting, altering, or reusing said stamps shall be subject to the same penalties as are imposed for the same offenses in relation to proprietary stamps.

See section 3429, p. 294, for penalties for counterfeiting, etc., proprietary stamps.

Held, that the article was none the less free from tax, as being "made from grapes grown in the United States," notwithstanding the carbonic acid gas was injected by a separate process of manufacture. (United States v. Wines of Blum., 6 Ben., 493; 17 Int. Rev. Rec., 181.)

SEC. 3329, as amended by section 10, act of May 28, 1880 (21 Stat., 145). Distilled spirits upon which all taxes have been paid may be exported, with the privilege of drawback, * * * and in distillers' original casks (or) packages, containing not less

Drawback on distilled spirits.

than twenty wine-gallons each, on application of the owner thereof to the collector of customs at any port of entry, and under such rules and regulations, and after making such entry as may be prescribed by law and by the Secretary of the Treasury. The entry for such exportation shall be in triplicate, and shall contain the name of the person applying to export, the name of the distiller, the name of the district in which the spirits were distilled, the name of the vessel by which, and the name of the port to which, they are to be exported; and the form of the entry shall be as follows:

Exportation of
distilled spirits
upon which tax
has been paid.

Export entry of distilled spirits entitled to drawback.

Entry of spirits distilled by _____, in _____ district, State of _____, to be exported by _____, in the _____, whereof _____ is master, bound to _____.

And the entry shall specify the whole number of casks or packages, the marks and serial numbers thereon, the quality or kind of spirits as known in commerce, the number of gauge or wine gallons and of proof-gallons; and the amount of the tax on such spirits shall be verified by the oath of the owner of the spirits, and that the tax has been paid thereon, and that they are truly intended to be exported to the port of _____, and not to be relanded within the limits of the United States. One bill of lading, duly signed by the master of the vessel, shall be deposited with said collector, to be filed at his office with the entry retained by him. One of said entries shall be, when the shipment is completed, transmitted to the Secretary of the Treasury, to be recorded and filed in his office. The lading on board said vessel shall be only after the receipt of an order or permit signed by the collector of customs and directed to a customs gauger, and after each cask or package shall have been distinctly marked or branded by said gauger as follows: "For export from U. S. A.," and the tax-paid stamps thereon obliterated. The casks or packages shall be inspected and gauged alongside of or on the vessel by the gauger designated by said collector, under such rules and regulations as the Secretary of the Treasury may prescribe; and on application of the said collector it shall be the duty of the surveyor of the port to designate and direct one of the custom-house inspectors to superintend such shipment. And the gauger aforesaid shall make a full return of such inspection and gauging in such form as may be prescribed by the Secretary of the Treasury, showing by whom each cask of such spirits was distilled, the serial number of the cask, and of the tax-paid stamp attached thereto, the proof and quantity of such spirits as per the original gauge-mark on each cask, and the quantity in proof and wine gallons as per the gauge then made by him. And said gauger shall certify on such return that the shipment has been made, in his presence, on board the vessel named in the entry for export, which return shall be indorsed by said custom-house inspector certifying that the casks or packages have been shipped under his supervision on board said vessel, and the tax-paid stamps obliterated; and the said inspector shall make a similar certificate to the surveyor of the port,

indorsed on or to be attached to the entry in possession of the custom-house.

Drawback.

A drawback shall be allowed upon distilled spirits on which the tax has been paid and exported to foreign countries, under the provisions of this act, when exported as herein provided for. The drawback allowed shall include the taxes levied and paid upon the distilled spirits exported, at the rate of *ninety* cents per proof-gallon, as per last gauge of said spirits prior to exportation, and shall be due and payable only after the proper entries have been made and filed, and all other conditions complied with as hereinbefore required, and on filing with the Secretary of the Treasury the proper claim, accompanied by the certificate of the collector of customs at the port of entry where the spirits are entered for export, that such spirits have been received into his custody and the tax-paid stamps thereon obliterated; and the Secretary of the Treasury shall prescribe such rules and regulations in relation thereto as may be necessary to secure the Treasury of the United States against frauds: *Provided*, That the drawback on spirits distilled prior to August one, eighteen hundred and seventy-two, shall not exceed sixty cents per proof-gallon.

One of the changes in section 3329 made by section 10, act of May 28, 1880, was in these words: "That section thirty-three hundred and twenty-nine of the Revised Statutes of the United States be amended by striking out after the word 'exported,' in the fifty-sixth line, the words 'at the rate of seventy cents per proof-gallon,' and inserting in lieu thereof the word 'ninety.'" It was intended by this amendment, as construed by this Office, simply to strike out "seventy" and insert "ninety," and is printed as intended.

In the absence of any opinion of law for the allowance of drawback of tax at the rate imposed by section 48 of the act of August 28, 1894, no greater allowance than here authorized can be made.

Drawback to be computed on *proof*-gallons in all cases, notwithstanding the fact that tax is levied and paid on the wine-gallon when below proof. (Decision of Secretary of the Treasury May 19, 1884, case of Lilienthal & Co., 30 Int. Rev. Rec., 157.)

Removal of spirits from distiller's original casks or packages to other packages prior to exportation, even if under supervision of customs officers, vitiates claim for drawback. (Decision of Secretary of the Treasury June 14, 1883, case of Hayes & Poppele. See also like decision (Treasury Department, No. 5859, August, 1883) as to exported spirits returned to United States to be recasked for re-exportation; 29 Int. Rev. Rec., 308.)

As the statute provides only for the exportation of spirits by *vessel* (see § 3) no allowance of drawback can be made on spirits exported by cars or other vehicles used as a means of transportation on land. (Decision of Secretary of the Treasury April 18, 1885, case of Lilienthal & Co.)

Date of exportation to be determined by date of sailing of exporting vessel. (Thompson *et al.* v. Peaslee, 20 How., 57.)

Regulation in regard to drawback of tax on distilled spirits. (Appendix to Regulation Series 7, No. 7, Revised.)

SEC. 3330, as amended by section 2, act of June 9, 1874 (18 Stat., 64);

Exportation of distilled spirits withdrawn from bonded warehouses.

and section 11, act of May 28, 1880 (21 Stat., 145.) Distilled spirits may be withdrawn from distillery bonded warehouses, at the instance of the owner of the spirits for exportation in the original casks, or *packages*, without the payment of tax, under such regulations, and after making such entries and executing and filing with the collector of the district from

which the removal is to be made such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury: *Provided*, That bonds given under this section shall be canceled under such regulations as the Secretary of the Treasury shall prescribe: *And provided further*, That the bonds required to be given for the exportation of distilled spirits shall be canceled upon the presentation of satisfactory proof and certificates that said distilled spirits have been landed at the port of destination named in the bill of lading, or upon satisfactory proof that after shipment the same were lost at sea without fault or neglect of the owner or shipper thereof.

All distilled spirits intended for export, as aforesaid, before being removed from the distillery warehouse, shall be marked as the Commissioner of Internal Revenue may prescribe, and shall have affixed to each cask an engraved stamp indicative of such intention, to be provided and furnished by the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner, and for the expense attending the providing and affixing such stamps *ten cents* for each package so stamped shall be paid to the collector on making the entry for such transportation. When the owner of the spirits shall have made the proper entries, filed the bonds, and otherwise complied with all the requirements of the law and regulations as herein provided, the collector shall issue to him a permit for the removal and transportation of said spirits to the collector of the port from which the same are to be exported, accurately describing the spirits to be shipped, the amount of tax thereon, the State and district from which the same is to be shipped, the name of the distiller by whom distilled, the port to which the same are to be transported, the name of the collector of the port to whom the spirits are to be consigned, and the routes over which they are to be sent to the port of shipment. Such shipment shall be made over bonded routes whenever practicable. The collector of the port shall receive such spirits, and permit the exportation thereof, under the same rules and regulations as are prescribed for the exportation of spirits upon which the tax has been paid.

Export stamp,
10 cents instead
of 25. (Sec. 2, act
June 9, 1874.)

And every person who fraudulently claims, or seeks, or obtains an allowance of drawback on any distilled spirits, or fraudulently claims any greater allowance or drawback than the tax actually paid thereon, shall forfeit and pay to the Government of the United States triple the amount wrongfully and fraudulently sought to be obtained, and shall be imprisoned not more than ten years; and every owner, agent, or master of any vessel or other person who knowingly aids or abets in the fraudulent collection or fraudulent attempts to collect any drawback upon, or knowingly aids or permits any fraudulent change in the spirits so shipped, shall be fined not exceeding five thousand dollars and imprisoned not more than one year, and the ship or vessel on board of which such shipment was made or pretended to be made shall be forfeited to the United States,

Fraudulent
claims for draw-
back.

Penalty.

whether a conviction of the master or owner be had or otherwise, and proceedings may be had in admiralty by libel for such forfeiture.

Relanding spirits shipped for exportation.

Penalty.

Every person who intentionally relands within the jurisdiction of the United States any distilled spirits which have been shipped for exportation under the provisions of this act, or who receives such relanded distilled spirits, and every person who aids or abets in such relanding or receiving of such spirits, shall be fined not exceeding five thousand dollars and imprisoned not more than three years; and all distilled spirits so relanded, together with the vessel from which the same were relanded within the jurisdiction of the United States, and all boats, vehicles, horses, or other animals used in relanding and removing such distilled spirits, shall be forfeited to the United States.

See notes under section 3329.

Section 3443, p. 338, fraudulent claims for drawback.

The amendment by the act of June 9, 1874, reduced the expense of export stamp from 25 to 10 cents.

Instructions relative to removal of spirits and giving bonds within thirty days from date of regauge for exportation. (Vol. 2, Treas. Dec. (1899), No. 21472.)

Series 7, No. 4, Revised. Concerning the transportation and exportation of distilled spirits in bond without payment of tax.

See on this section *Clay v. Swope* (1889), (35 Int. Rev. Rec., 136).

As to wooden packages containing metallic cans, see section 3287, as amended, p. 172.

SEC. [3330a]. *Section 1, act of June 9, 1874 (18 Stat., 64), as amended*

On withdrawal of spirits for exportation transportation bond may be taken.

by section 10, act of March 1, 1879 (20 Stat., 327). That whenever the owner or owners of distilled spirits shall desire to withdraw the same from any distillery bonded warehouse for exportation under existing law, such owner or owners may at their option, in lieu of executing an export bond as now provided by law, give a transportation bond with sureties satisfactory to the collector of internal revenue, and under such rules and regulations as the Secretary of the Treasury may prescribe, conditioned for the due delivery thereof on board ship at a port of exportation to be named therein, and for the due performance on the part of the exporter or owner at the port of export of all the requirements in regard to notice of export, entry, and the giving of bond hereinafter specified; and in such case, on arrival of the spirits at the port of export, the exporter or owner at that port shall

Notice to collector of port.

immediately notify the collector of the port of the fact, setting forth his intention to export the same, and the name of the vessel upon which the same are to be laden, and the port to which they are intended to be exported. He shall, after the quantity of spirits has been determined by the gauger and inspector, file with the collector of the port an export-entry verified by his oath or affirmation. He shall also give bond to the United States, with at least two sureties, satisfactory to the collector of customs, conditioned that the principal named in said bond will export the spirits as specified in said entry to the port designated in said entry, or to some other port without the jurisdiction of the United States.

Export entry.

Export bond.

And upon the lading of such spirits, the collector of the port, after proper bonds for the exportation of the same

have been completed by the exporter or owner at the port of shipment thereof, shall transmit to the collector of internal revenue of the district from which the said spirits were withdrawn for exportation, a clearance certificate and a detailed report of the gauger, which report shall show the capacity of each cask in wine-gallons, and the contents thereof in wine-gallons, proof-gallons, and taxable gallons. Upon receipt of the certificate and report, and upon payment of tax on deficiency, if any, the collector of internal revenue shall cancel the transportation bond. The bond required to be given for the landing at a foreign port of distilled spirits shall be canceled upon the presentation of satisfactory proof and certificates that said distilled spirits have been landed at the port of destination named in the bill of lading or any other port without the jurisdiction of the United States or upon satisfactory proof that after shipment the same were lost at sea without fault or neglect of the owner or shipper thereof; *and whenever a distiller of spirits in bond shall desire to change the packages in which the same is contained, in order to export them, the Commissioner of Internal Revenue shall be authorized, under regulations to be prescribed by him, and upon the execution of proper bonds with sufficient sureties, to permit the withdrawal of so much spirits from bond and in new packages as the distiller shall desire to export as aforesaid.*

Clearance certificate and gauger's report.

Cancellation of transportation bond.

Cancellation of export bond.

Change of package.

Tax on deficiency in transportation on the quantity of spirits withdrawn from distillery warehouse for export may be collected by distraint as well as by suit upon the transportation bond. (16 Op. Atty. Gen., 634; 25 Int. Rev. Rec., 342.)

The shipment of domestic spirits to a foreign country and their subsequent return to the United States do not constitute an exportation and reimportation within the contemplation of law, where the spirits were shipped abroad with the intention of being returned to this country. (17 Op. Atty. Gen., 579; 29 Int. Rev. Rec., 225.)

Extending bonding period in case of spirits to be exported. 18 Op. Atty. Gen., 92; 30 Int. Rev. Rec., 405.)

Condition of export bond being broken through failure to withdraw spirits from distillery warehouse, tax should be assessed, bond may be sued, or tax may be collected by distraint. (18 Op. Atty. Gen., 246 (Garland); 31 Int. Rev. Rec., 246.)

Railroad companies and stockholders in incorporated distilling companies, as sureties on transportation bonds. (29 Int. Rev. Rec., 177, 185.)

Tax on loss in distillery warehouse after filing export bond and before actual withdrawal. (United States v. Thompson. 32 Int. Rev. Rec., 166; 142 U. S., 471.)

Suit to restrain the collector from refusing to accept export bonds. (Miles v. Johnson, collector, 40 Int. Rev. Rec., 10.)

Flagler v. Kidd, 78 Fed. Rep., 341, 343, reversing 54 *Id.*, 367.

See notes under sec. 3330, R. S.

[SEC. 3330 b.] Section 1. Act of December 20, 1879 (21 Stat., 59).

That where spirits are withdrawn from distillery warehouses for exportation according to law, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for an allowance to be made for leakage or loss by any unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from a distillery warehouse to the port of export; nor shall any assessment

Allowance for leakage or loss during transportation.

be collected for such loss or leakage where the same has not been paid on distilled spirits exported since the first day of May, eighteen hundred and seventy-eight.

When spirits are insured.

SEC. 2. That where the spirits provided for in the preceding section are covered by a valid claim of insurance in excess of the market value thereof, exclusive of the tax, the tax upon such spirits shall not be remitted to the extent of such excessive insurance.

See sections 3221, p. 106, 3223, p. 108, as to spirits accidentally destroyed in warehouse.

[3433 a] [3433 b], sec. 15, act of May 28, 1880, p. 296, as to losses during transfers from distillery warehouses to manufacturing warehouses.

Release of distillery before judgment, in what cases.

SEC. 3331. No distillery nor distilling-apparatus seized for any violation of law shall be released to the claimant or to any intervening party before judgment, except in case of a distillery for which bond has been given and which has a registered producing capacity of one hundred and fifty proof gallons or more per day, on showing, by sufficient affidavits, that there are hogs or other live stock, not less than fifty head in number, depending for their feed on the products of said distillery, which would suffer injury if the business of such distillery is stopped. Such distillery, in that case, may be released to the claimant, or to any other intervening party, at the discretion of the court, on a bond to be given and approved in open court, with two or more sureties, for the full appraised value of all the property seized, to be ascertained by three competent appraisers designated and appointed by the court.

Stills, etc., to be destroyed in certain cases.

SEC. 3332, as amended by section 5, act of March 1, 1879 (20 Stat., 327). When a judgment of forfeiture, in any case of seizure, is recovered against any distillery used or fit for use in the production of distilled spirits, because no bond has been given, or against any distillery used or fit for use in the production of spirits, having a registered producing capacity of less than one hundred and fifty gallons a day, for any violation of law, of whatever nature, every still, doubler, worm, worm-tub, mash-tub, and fermenting-tub therein shall be so destroyed as to prevent the use of the same or of any part thereof for the purpose of distilling; and the materials shall be sold as in case of other forfeited property.

And in case of seizure of a still, doubler, worm, worm-tub, mash-tub, fermenting-tub, or other distilling-apparatus, having a less producing capacity than one hundred and fifty gallons per day, for any offense involving forfeiture of the same, where said apparatus shall be of less than five hundred dollars' value, and where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same only so far as to prevent the use thereof, or any part thereof, for the purpose of distilling: *Provided*, That such destruction shall be in the presence of at least one credible witness, and that such witness shall unite with the said officer in a duly sworn report of said seizure and destruction, to be made to the Commissioner of Internal Revenue, in which report they shall set forth the grounds of the claim of forfeiture, the reasons for such seizure and destruc-

tion, their estimate of the fair cash value of the apparatus destroyed, and also of the materials remaining after such destruction, and a statement that, from facts within their own knowledge, they have no doubt whatever that said distilling apparatus was set up for use and not registered, or had been used in the unlawful distillation of spirits, and that it was impracticable to remove the same to a place of safe storage.

Within one year after such destruction the owner of the apparatus so destroyed may make application to the Secretary of the Treasury through the Commissioner of Internal Revenue, for reimbursement of the value of the same; and unless it shall be made to appear to the satisfaction of the Secretary and the Commissioner that said apparatus had been used in the unlawful distillation of spirits, the Secretary shall make an allowance to said owner, not exceeding the value of said apparatus, less the value of said materials as estimated in said report; and if the claimant shall thereupon satisfy said Secretary and Commissioner that said unlawful use of the apparatus had been without his consent or knowledge, he shall still be entitled to such compensation, but not otherwise. And in case of a wrongful seizure and destruction of property under the foregoing provisions, the owner thereof shall have right of action on the official bond of the officer who occasioned the destruction for all damages caused thereby.

Owner may be reimbursed in certain cases on application within one year.

Wrongful seizures; officer liable.

The words "judgment of forfeiture" include cases of forfeiture under section 3460, p. 346. (33 Int. Rev. Rec., 397.)

State of North Carolina v. Thos. H. Vanderford. Indictment for a wanton and willful injury to personal property. (34 Int. Rev. Rec., 190.)

SEC. 3333. Whenever seizure is made of any distilled spirits found elsewhere than in a distillery or distillery warehouse, or other warehouse for distilled spirits authorized by law, or than in the store or place of business of a rectifier, or of a wholesale liquor-dealer, or than in transit from any one of said places; or of any distilled spirits found in any one of the places aforesaid, or in transit therefrom, which have not been received into or sent out therefrom in conformity to law, or in regard to which any of the entries required by law to be made in the books of the owner of such spirits, or of the store-keeper, wholesale dealer, or rectifier, have not been made at the time or in the manner required, or in respect to which the owner or person having possession, control, or charge of said spirits, has omitted to do any act required to be done, or has done or committed any act prohibited in regard to said spirits, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed, and that all the requirements of the law in relation to the payment of the tax have been complied with.

Burden of proof on claimant.

United States v. Six Barrels Distilled Spirits (6 Int. Rev. Rec., 187); United States v. Seventy-eight Barrels Spirits (7 *ibid.*, 4).

SEC. 3334, as amended by section 5, act March 1, 1879 (20 Stat., 327). All distilled spirits forfeited to the United States, sold by

Spirits sold under judicial process subject to tax.

order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon. And any distilled spirits heretofore condemned, and now in the possession of the United States, shall be sold as herein provided. If any tax-paid stamps are affixed to any cask or package so condemned, such stamps shall be obliterated and destroyed by the collector or marshal after forfeiture, and before such sale.

Provision wherespirits will not sell for price equal to tax.

Provided: That in all cases wherein it shall appear that any distilled spirits offered for sale on distraint for taxes, where the taxes on such spirits have not been paid, or offered for sale for the benefit of the United States as forfeited spirits under order of court or under proceeding pursuant to section thirty-four hundred and sixty of the Revised Statutes, will not, by reason of such spirits being below proof, being [bring] a price equal to the taxes due and payable thereon, but will bring a price equal to, or greater than, the tax on said spirits, computed only upon the proof-gallons contained in the packages, without regard to the greater number of wine-gallons contained therein, then, and in such case, upon sale being so made, tax-paid stamps to the amount required to stamp such spirits as if the tax thereon were only on the proof-gallons thereof, may, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered. Any collector using or furnishing stamps in manner aforesaid, on presenting vouchers satisfactory to the Commissioner of Internal Revenue, shall be allowed credit for the same in settling his stamp account with the department. In such cases, the officer selling the distilled spirits shall affix, or cause to be affixed, to the same the tax-paid stamps so provided, and shall write across the face of such stamps the true number of proof and wine gallons contained in the package, the amount of tax actually paid thereon, and also the words "Affixed under provisions of act of ———, 1879" (inserting the date of the approval of this act).

In case spirits which have once paid the tax are seized and sold under process of distraint for the collection of an assessed tax they are not required to be sold subject to tax.

Foreign distilled spirits not liable to tax imposed under the internal-revenue laws when forfeited under the provisions of the customs laws. (24 Int. Rev. Rec., 393.)

As to destruction of spirits which will not sell for a price equal to tax on the proof gallons see last provision of section 3450, p. 342.

SPECIAL BONDED WAREHOUSES FOR FRUIT BRANDY.

[Act of March 3, 1877 (19 Stat., 393).]

The provisions of this act were extended and made applicable to brandy distilled from apples or peaches by the act of October 18, 1888. (25 Stat., 560.)

SEC. 1. That the Commissioner of Internal Revenue shall be, and hereby is, authorized in his discretion, and upon the

execution of such bonds as he may prescribe, to establish warehouses, to be known as special bonded warehouses, not exceeding ten in number in any one collection-district, exclusively for the storage of brandy made from grapes, each of which warehouses shall be in the charge of a storekeeper, to be appointed, assigned, transferred, and paid in the same manner that storekeepers for distillery-warehouses are now appointed, assigned, transferred, and paid. Every such warehouse shall be under the control of the collector of internal revenue of the district in which such warehouse is located, and shall be in the joint custody of the storekeeper and the proprietor thereof and kept securely locked, and shall at no time be unlocked or opened or remain open except in the presence of such storekeeper or other person who may be designated to act for him, as provided in the case of distillery-warehouses. And such warehouses shall be under such further regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Not over ten in one district.

In charge of storekeeper.

Under control of collector.

In joint custody of storekeeper and proprietor.

Not to be unlocked or opened except, etc.

Regulations.

SEC. 2. That every distiller of brandy from grapes, upon rendering his monthly return of materials used and spirits produced by him, shall immediately pay the tax upon such spirits, or may, after they have been properly gauged, marked, and branded, under regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, and also stamped as hereinafter provided, cause them to be removed in bond from the place of manufacture to a special bonded warehouse, under such regulations, and after making such entries, and executing and filing with the collector of the district in which such spirits were manufactured such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

Distiller to pay tax on rendering monthly return, or may remove brandy in bond to special bonded warehouse.

Bond to be conditioned under act August 28, 1894, for payment of tax at \$1.10 per gallon within eight years from date of original gauge. See page 176.

SEC. 3. That all brandy intended for deposit in a special bonded warehouse, before being removed from the distillery, shall have affixed to each package an engraved stamp indicative of such intention, to be provided and furnished to the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner. * * *

Stamp to be affixed before removal.

The act of May 28, 1880 (21 Stat., 145), repealed the provision charging 10 cents for these stamps.

SEC. 4, as amended by section 49, act of August 28, 1894 (28 Stat., 509). That any brandy made from grapes removed in bond according to law may, upon its arrival at a special bonded warehouse, be deposited therein upon making such entries, filing such bonds and other securities, and under such regulations as shall be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. It shall be one of the conditions of the warehousing-bond covering such spirits that the principal named in said bond shall pay the tax on the spirits as specified in

How brandy may be deposited in the warehouse.

Tax shall be paid within eight years from date of original gauge.

the entry, or cause the same to be paid within *eight* years from the date of the original gauging of the same, and before withdrawal, except as hereinafter provided.

Only one withdrawal for transportation to another warehouse.

In such case, additional stamp to be affixed.

Export stamp, etc., on exportation.

Provisions of sec. 3330, R. S., page 204, made applicable.

How withdrawals to be made.

Export bonds, how canceled.

Provisions of sec. 3221, R. S., page 106, etc., as to loss by casualty, made applicable.

Exportation free of tax.

Drawback.

SEC. 5. That any brandy made from grapes may be withdrawn once and no more from one special bonded warehouse for transportation to another special bonded warehouse; and such brandy shall, on its arrival at the second special bonded warehouse, be immediately entered therein, from which warehouse it shall be withdrawn only on payment of the tax or for immediate exportation. In case the brandy withdrawn is intended for deposit in another special bonded warehouse, an additional stamp, indicative of such intention, shall be affixed to each package withdrawn, as in the case of brandy withdrawn from a distillery intended to be so deposited. And in case the brandy is intended for exportation, an engraved stamp indicative of such intention, shall be affixed to each package so removed, as in the case of spirits withdrawn from a distillery bonded warehouse for exportation, under the provisions of section thirty-three hundred and thirty, Revised Statutes: all the provisions of which section not inconsistent with this act are hereby made applicable to such withdrawals. And all withdrawals authorized by law of grape-brandy from any special bonded warehouse shall be upon making such withdrawal entries, and under such regulations, and unless the withdrawal is upon payment of tax, upon the execution of such bonds and bills of lading as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Export bonds given under the provisions of this act shall be canceled upon the production of such certificates of landing as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, or upon proof of loss at sea satisfactory to the Commissioner of Internal Revenue. And the provisions of existing law relative to an allowance of loss by casualty in a distillery bonded warehouse are hereby made applicable to brandy stored in special bonded warehouses, in accordance with the provisions of this act.

As to reauge of spirits withdrawn from warehouse, allowance for leakage, etc., see section 3294a, page 178.

SEC. 6. That the provisions of existing law in regard to the exportation of distilled spirits are hereby extended so as to permit the exportation from special bonded warehouses of grape brandy free of tax in any original cask containing not less than twenty gallons, and for the exportation of grape brandy upon which all taxes have been paid, with the privilege of drawback in quantities of not less than one hundred gallons, and in the distillers' original cask, containing not less than twenty nine gallons each.

Twenty *wine* gallons undoubtedly intended, instead of "twenty nine gallons," as in the act. It was probably an error in engraving.

See sec. 3329, p. 202, and sec. 3330, p. 204.

Warehouse may be discontinued, etc.

SEC. 7. That whenever, in the opinion of the Commissioner of Internal Revenue, any special bonded warehouse

is unsafe or unfit for use, or the merchandise therein is liable to loss or great wastage, he may discontinue such warehouse, and require the merchandise therein to be transferred to such other warehouse as he may designate, and within such time as he may prescribe; and all the provisions of section thirty two hundred and seventy two of the Revised Statutes of the United States, relating to transfers of spirits from warehouses, including those imposing penalties, are hereby made applicable to transfers from special bonded warehouses.

Sec. 3272, R. S., p. 164, as to transfers, etc., made applicable.

SEC. 8. That the tax upon any brandy distilled from grapes, removed from the place where it was distilled, and in respect of which any requirement of this act is not complied with, shall at any time when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

When tax may be assessed and collected by distraint.

SEC. 9. That nothing in this act shall be construed as extending the time in which the tax on brandy made from grapes shall be paid beyond three years from the day on which the taxable quantity is ascertained by the ganger; and all brandy made from grapes, found elsewhere than in a distillery or special bonded warehouse, not having been removed therefrom according to law, and all brandy on which the tax has not been paid within three years of the date of the original gauging shall be forfeited to the United States.

Tax must be paid within three years.

Forfeiture.

Bonding period changed from three years to eight years by section 49, act of August 28, 1894. See page 176.

SEC. 10. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may make all needful rules and regulations for carrying into effect the provisions of this act, and such regulations when made shall have all the force and effect of law.

Regulations to have the force and effect of law.

SEC. 11. That in case any grape brandy removed from the distillery for deposit in a special warehouse, shall fail to be deposited in such warehouse within ten days thereafter, or within the time specified in any bond given on such removal, or if any grape brandy deposited in any special warehouse shall be taken therefrom for deposit in another warehouse, or for export, or otherwise, without full compliance with the provisions of this act, and with the requirements of any regulations made thereunder, and with the terms of any bond given on such removal, then any person who shall be guilty of such failure, and any person who shall in any manner violate any provision of this act, or of the regulations made in pursuance thereof, shall be subject, on conviction, to a fine of not less than one hundred dollars nor more than five thousand dollars, and to imprisonment for not less than three months nor more than three years, for every such failure or violation; and the

Penal provisions as to offenses specified.

spirits as to which such failure or violation shall take place shall be forfeited to the United States.

AN ACT to provide for warehousing fruit brandy.

[Act of October 18, 1888 (25 Stat., 560.)]

Extension of provisions of Act of March 3, 1877.

Be it enacted, &c., That the provisions of an act entitled "An act relating to the production of fruit brandy, and to punish frauds connected with the same," approved March third, eighteen hundred and seventy-seven, be extended and made applicable to brandy distilled from apples or peaches, or from any other fruit the brandy distilled from which is not now required or hereafter shall not be required to be deposited in a distillery warehouse: *Provided*, That each of the warehouses established under said act, or which may hereafter be established, shall be in charge either of a storekeeper or of a storekeeper and gauger, at the discretion of the Commissioner of Internal Revenue.

Regulations, Series 7, No. 5, revised—Concerning special-bonded warehouses for storage of brandy made from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, or prunes, exclusively.

Supplement No. 1: (Regulations, Series 7, No. 5, revised September 11, 1899.)

IMPORTED LIQUOR STAMPS, ETC.

Packages of imported spirits, wines, and malt liquors to be stamped, etc.

[SEC. 11.] *Act of March 1, 1879 (20 Stat., 327).* That all distilled spirits, wines, and malt liquors, imported in pipes, hogsheads, tierces, barrels, casks, or other similar packages, shall be first placed in public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected, marked, and branded by a United States customs-gauger, and a stamp affixed to each package, indicating the date and particulars of such inspection; and the Secretary of the Treasury is hereby authorized to prescribe the form of, and provide, the requisite stamps, and to make all regulations which he may deem necessary and proper for carrying the foregoing requirements into effect.

Forfeiture.

Special stamp when packages of imported spirits are filled on the premises of a wholesale liquor dealer.

Any pipe, hogshead, tierce, barrel, cask, or other package withdrawn from public store or bonded warehouse after the thirtieth day of June, eighteen hundred and seventy-nine, purporting to contain imported liquor, found without having thereon the stamp hereby required, shall be, with its contents, forfeited to the United States; and whenever any cask or package of imported distilled spirits of not less than five wine-gallons is filled for shipment, sale, or delivery on the premises of any wholesale liquor-dealer, the same shall be stamped with a special stamp for imported spirits, under such rules and regulations as the Commissioner of Internal Revenue has prescribed, or may hereafter prescribe, in the case of domestic distilled spirits.

Reimportation of articles exported (§ 2500).

Stamps for reimported domestic spirits. (27 Int. Rev. Reo., 333.)

[SEC. 12.] *Act of March 1, 1879 (20 Stat., 327), as amended by section 12, act of May 28, 1880 (21 Stat., 145).* That every person who empties or draws off, or causes to be emptied or drawn off, the contents of any package of imported liquors stamped as above required, shall, at the time of such emptying, efface, obliterate, and destroy the stamp thereon, and also all other marks or brands which shall have been placed thereon in accordance with the law or regulations concerning imported liquors. * * *

When packages of imported liquors are emptied, stamps to be effaced.

Every cask or other package from which the stamp for imported liquors required by this act to be placed thereon shall not be effaced, obliterated, or destroyed, on emptying such package, shall be forfeited, and the same may be seized by any officer of internal revenue wherever found; and all the provisions and penalties of section thirty-three hundred and twenty-four of the Revised Statutes of the United States, relating to empty casks or packages from which the marks, brands, or stamps have not been effaced or obliterated, and relating to the removal of stamps from packages, and to having in possession any stamps so removed, shall apply to the stamps for imported spirits herein provided for, and to the casks or other packages on which such stamps shall have been used.

Penalty for not effacing stamps.

Sec. 3324.

United States v. Morris Spiegel (116 U. S., 270; 32 Int. Rev. Rec., 54).

[SEC. 13.] *Act of March 1, 1879, as amended by section 13, act of May 28, 1880 (21 Stat., 145).* That if any person shall purchase or sell, with the imported-liquor stamp herein required remaining thereon, or any of the marks or brands which shall have been placed thereon in accordance with the laws or regulations concerning imported liquors remaining thereon, any cask or other package, after the same has been once used to contain imported liquors and has been emptied; or if any person shall use or have in possession such cask or package, with any imitation of such marks or brands, for the purpose of placing domestic distilled spirits therein for sale, * * * every such cask or package, with its contents, if any, shall be forfeited to the United States.

Penalty for dealing in or using empty casks with imported stamps, marks, etc., thereon.

And every such person who shall violate any of the provisions of this section shall be liable to a penalty of two hundred dollars for every such cask or package so purchased, sold, manufactured, used, or had in possession.

Penalty.

Grape brandy used for the fortification of wine.

SEC. 42. *Act of October 1, 1890 (26 Stat., 621).* That any producer of pure sweet wines, who is also a distiller, authorized to separate from fermented grape-juice, under internal-revenue laws, wine spirits, may use, free of tax, in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such

Wine spirits may be used free of tax.

reports as to materials and products, as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe, so much of such wine spirits so separated by him as may be necessary to fortify the wine for the preservation of the saccharine matter contained therein:

Limitations.

Provided, That the wine spirits so used free of tax shall not be in excess of the amount required to introduce into such sweet wines in (an) alcoholic strength equal to fourteen per centum of the volume of such wines after such use:

Alcoholic strength.

Provided further, That such wine containing after such fortification more than twenty-four per centum of alcohol, as defined by section thirty-two hundred and forty-nine of the Revised Statutes, shall be forfeited to the United States:

Confined to certain months.

Provided further, That such use of wine spirits free from tax shall be confined to the months of August, September, October, November, December, January, February, March, and April of each year.

Assessments under section 3309, credits.

The Commissioner of Internal Revenue, in determining the liability of any distiller of fermented grape-juice to assessment under section thirty-three hundred and nine of the Revised Statutes, is authorized to allow such distiller credit in his computation for the wine spirits used by him in preparing sweet wine under the provisions of this section.

Wine spirits defined.

SEC. 43. *Act of October 1, 1890 (26 Stat., 567), as amended by section 68, Act of August 28, 1894 (28 Stat., 509)*. That the wine spirits mentioned in section forty-two of this Act is the product resulting from the distillation of fermented grape juice and shall be held to include the product commonly known as grape brandy; and the pure sweet wine which may be fortified free of tax, as provided in said section, is fermented grape juice only, and shall contain no other substance of any kind whatever introduced before, at the time of, or after fermentation and such sweet wine shall contain not less than four per centum of saccharine matter, which saccharine strength may be determined by testing with Balling's saccharometer or must scale, such sweet wine, after the evaporation of the spirit contained therein, and restoring the sample tested to original volume by addition of water: *Provided*, That the addition of pure boiled or condensed grape must, or pure crystallized cane or beet sugar to the pure grape juice aforesaid, or the fermented product of such grape juice prior to the fortification provided for by this Act for the sole purpose of perfecting sweet wines according to commercial standard, shall not be excluded by the definition of pure, sweet wine aforesaid: *Provided further*, That the cane or beet sugar so used shall not be in excess of ten per cent of the weight of wines to be fortified under this Act.

Pure sweet wine defined.

Regulations concerning the withdrawal of wine spirits or grape brandy from distilleries and special bonded warehouses, free of tax, for the fortification of pure sweet wines; also from such warehouses for the fortification of wines for export. (Series 7, No. 5, revised; Supplement No. 1, issued September 11, 1899.)

SEC. 44. That any person who shall use wine spirits, as

defined by section fifty-four (*forty-three*) of this act, or other spirits on which the internal-revenue tax has not been paid, otherwise than within the limitations set forth in section fifty-five (*forty-two*) of this act, and in accordance with the regulations made pursuant to this act, shall be liable to a penalty of double the amount of the tax on the wine spirits or other spirits so unlawfully used. Whenever it is impracticable in any case to ascertain the quantity of wine spirits or other spirits that have been used in violation of this act in mixtures with any wines, all alcohol contained in such unlawful mixtures of wine with wine spirits or other spirits in excess of ten per centum shall be held to be unlawfully used: *Provided, however,* That if water has been added to such unlawful mixtures, either before, at the time of, or after such unlawful use of wine-spirits or other spirits, all the alcohol contained therein shall be considered to have been unlawfully used. In reference to alcoholic strength of wines and mixtures of wines with spirits in this act the measurement is intended to be according to volume and not according to weight.

Penalty for unlawful use of wine spirits.

SEC. 45. That under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, any producer of pure sweet wines as defined by this act may withdraw wine spirits from any special bonded warehouse free of tax, in original packages, in any quantity not less than eighty wine-gallons, and may use so much of the same as may be required by him, under such regulations, and after the filing of such notices and bonds, and the keeping of such records, and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury shall prescribe, in fortifying the pure sweet wines made by him, and for no other purpose, in accordance with the limitations and provisions as to uses, amount to be used, and period for using the same set forth in section fifty-three (*forty-two*) of this act; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized, whenever he shall deem it to be necessary for the prevention of violations of this law, to prescribe that wine-spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying-house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by his regulation shall be stored.

Withdrawal of spirits from warehouse free of tax.

The use of wine-spirits free of tax for the fortification of sweet wines under this act shall be begun and completed at the vineyard of the wine-grower where the grapes are crushed and the grape juice is expressed and fermented,

Use of spirits free of tax to be at vineyard, under supervision of officer.

such use to be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the Commissioner of Internal Revenue shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine-spirits and for rewarehousing or for payment of the tax on any portion of such wine-spirits which remain not used in fortifying pure sweet wines.

Withdrawal
of spirits to
fortify wines
intended for ex-
port.

SEC. 46. That wine-spirits may be withdrawn from special bonded warehouses at the instance of any person desiring to use the same to fortify any wines, in accordance with commercial demands of foreign markets, when such wines are intended for exportation, without the payment of tax on the amount of wine spirits used in such fortification, under such regulations, and after making such entries, and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security to prevent the use of such wine-spirits free of tax otherwise than in the fortification of wine intended for exportation, and for the due exportation of the wine so fortified, as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and all of the provisions of law governing the exportation of distilled spirits free of tax, so far as applicable, shall apply to the withdrawal and use of wine-spirits and the exportation of the same in accordance with this section; and the Commissioner of Internal Revenue is authorized, subject to approval by the Secretary of the Treasury, to prescribe that wine spirits intended for the fortification of wines under this section shall not be introduced into such wines except under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Whenever such wine-spirits are withdrawn as provided herein for the fortification of wines intended for exportation by sea they shall be introduced into such wines only after removal from storage and arrival alongside of the vessel which is to transport the same; and whenever transportation of such wines is to be effected by land carriage the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as to sealing packages and vehicles containing the same, and as to the supervision of transportation from the point of departure, which point shall be determined as the place where such wine-spirits may be introduced into such wines to the point of destination as may be necessary to insure the due exportation of such fortified wines.

SEC. 47. That all provisions of law relating to the re-im-<sup>Re-importa-
tion.</sup>portation of any goods of domestic growth or manufacture which were originally liable to an internal-revenue tax shall be, as far as applicable, enforced against any domestic wines sought to be re-imported; and duty shall be levied and collected upon the same when re-imported, as an original importation.

SEC. 48. That any person using wine spirits or other spirits which have not been tax-paid in fortifying wine otherwise than as provided for in this act, shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished for each offense by a fine of not more than two thousand dollars, and for every offense other than the first also by imprisonment for not more than one year.<sup>Penalty for
using spirits in
fortifying wines
contrary to law.</sup>

SEC. 49. That wine spirits used in fortifying wines may be recovered from such wine only on the premises of a duly authorized grape-brandy distiller; and for the purpose of such recovery wines so fortified may be received as material on the premises of such a distiller, on a special permit of the collector of internal revenue in whose district the distillery is located; and the distiller will be held to pay the tax on a product from such wines as will include both the alcoholic strength therein produced by the fermentation of the grape-juice and that obtained from the added distilled spirits.<sup>Recovery of
spirits used in
fortifying wines.</sup>

Regulations relative to the use of spirits free of tax for fortifying wines. (Series 7, No. 5, Revised, Supplement No. 1.)

[Act of March 3, 1897 (29 Stat., 626).]

AN ACT To allow the bottling of distilled spirits in bond.

SEC. 1. That whenever any distilled spirits deposited in the warehouse of a distillery having a surveyed daily capacity of not less than twenty bushels of grain, which capacity or not less than twenty bushels thereof is commonly used by the distiller, have been duly entered for withdrawal upon payment of tax, or for export in bond, and have been gauged and the required marks, brands, and tax-paid stamps or export stamps, as the case may be, have been affixed to the package or packages containing the same, the distiller or owner of said distilled spirits, if he has declared his purpose so to do in the entry for withdrawal, which entry for bottling purposes may be made by the owner as well as the distiller, may remove such spirits to a separate portion of said warehouse which shall be set apart and used exclusively for that purpose, and there, under the supervision of a United States storekeeper, or storekeeper and gauger, in charge of such warehouse, may immediately draw off such spirits, bottle, pack, and case the same: *Provided*, That for convenience in such process any number of packages of spirits of the same kind, differing only in proof, but produced at the same distillery by the same distiller, may be mingled together in a cistern provided for that purpose, but nothing herein shall authorize or permit any mingling of different products, or of the same products of different distilling seasons, or the addition<sup>Bottling of dis-
tilled spirits in
bond.</sup>
<sup>Spirits entered
for bottling pur-
poses in ware-
house.</sup>

- or the subtraction of any substance or material or the application of any method or process to alter or change in any way the original condition or character of the product except as herein authorized; nor shall there be at the same time in the bottling room of any bonded warehouse any spirits entered for withdrawal upon payment of the tax and any spirits entered for export: *Provided also*, That under such regulations and limitations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the provisions of this Act may be made to apply to the bottling and casing of fruit brandy in special bonded warehouses.
- Regulations.** Every bottle when filled shall have affixed thereto and passing over the mouth of the same such suitable adhesive engraved strip stamp as may be prescribed, as hereinafter provided, and shall be packed into cases to contain six bottles or multiples thereof, and in the aggregate not less than two nor more than five gallons in each case, which shall be immediately removed from the distillery premises.
- Stamp, how affixed.** Each of such cases shall have affixed thereto a stamp denoting the number of gallons therein contained, such stamp to be affixed to the case before its removal from the warehouse, and such stamps shall have a cash value of ten cents each, and shall be charged at that rate to the collectors to whom issued, and shall be paid for at that rate by the distiller or owner using the same.
- Cases to have stamp affixed.** And there shall be plainly burned on the side of each case, to be known as the Government side, the proof of the spirits, the registered distillery number, the State and district in which the distillery is located, the real name of the actual bona fide distiller, the year and distilling season, whether spring or fall, of original inspection or entry into bond, and the date of bottling, and the same wording shall be placed upon the adhesive engraved strip stamp over the mouth of the bottle. It being understood that the spring season shall include the months from January to July, and the fall season the months from July to January.
- Branding of cases.** And no trade marks shall be put upon any bottle unless the real name of the actual bona fide distiller shall also be placed conspicuously on said bottle.
- Trade marks.**

Case stamps for distilled spirits bottled for export. (Circular No. 6; Int. Rev. Cir. No. 489, Jan. 6, 1898; vol. 1, Treas. Dec. No. 18763.)

Change of date on and use of case stamps printed for bottling distilled spirits in fall of 1897. (Circular No. 10; Int. Rev. 490, Jan. 12, 1898; vol. 1, Treas. Dec. No. 18802.)

Case stamps. (Circular No. 55; Int. Rev. 492, Mar. 29, 1898; vol. 1, Treas. Dec. No. 19155; Circular No. 552; vol. 3, Treas. Dec. (1900) Int. Rev. No. 32.)

Regulations.

SEC. 2. That the Commissionuer of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulations, prescribe the mode of separating and securing the additional warehouse, or portion of the warehouse hereinbefore required to be set apart, the manner in which the business of bottling spirits in bond shall be carried on, the notices, bonds, and returns to be given and accounts and records to be kept by the persons conducting such business,

the mode and time of inspection of such spirits, the accounts and records to be kept and returns made by the Government officers, and all such other matters and things, as in his discretion, he may deem requisite for a secure and orderly supervision of said business; and he may also, with the approval of the Secretary of the Treasury, prescribe and issue the stamps required.

Inspection of spirits.

The distiller may, in the presence of the United States storekeeper or storekeeper and gauger, remove by straining through cloth, felt, or other like material any charcoal, sediment, or other like substance found therein, and may whenever necessary reduce such spirits as are withdrawn for bottling purposes by the addition of pure water only to one hundred per centum proof for spirits for domestic use, or to not less than eighty per centum proof for spirits for export purposes, under such rules and regulations as may be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury; and no spirits shall be withdrawn for bottling under this Act until after the period shall have expired within which a distiller may request a regauge of distilled spirits as provided in section fifty of the Act of August twenty-eighth, eighteen hundred and ninety-four.

Spirits reduced by adding water.

A filtering apparatus, packed with cloth, felt, or other like material, such as cotton fiber or wood or paper pulp, may be used for straining spirits to be bottled in bond. Permission to use such filters will be granted only upon the express condition that the packing material is one mentioned in the statute, or similar thereto, and that in no case shall charcoal, boneblack, etc., be used, as such materials might effect changes in the spirits other than the mechanical removal of matter in suspension. (Vol. 1, Treas. Dec. (1899), No. 21106.)

SEC. 3. That all distilled spirits intended for export under the provisions of this Act shall be inspected, bottled, cased, weighed, marked, labeled, stamped, or sealed in such manner and at such time as the Commissioner of Internal Revenue may prescribe; and the said Commissioner, with the approval of the Secretary of the Treasury, may provide such regulations for the transportation, entry, reinspection, and lading of such spirits for export as may from time to time be deemed necessary; and all provisions of existing law relating to the exportation of distilled spirits in bond, so far as applicable, and all penalties therein imposed, are hereby extended and made applicable to distilled spirits bottled for export under the provisions of this Act, but no drawbacks shall be allowed or paid upon any spirits bottled under this Act.

Spirits for export.

Existing laws made applicable.

SEC. 4. That where, upon inspection at the bonded warehouse in which the spirits are bottled as aforesaid, the quantity so bottled and cased for export is less than the quantity actually contained in the distiller's original casks or packages at the time of withdrawal for that purpose the tax on the loss or deficiency so ascertained shall be paid before the removal of the spirits from such warehouse, and the tax so paid shall be receipted and accounted for by the collector in such manner as the Commissioner of Internal Revenue may prescribe.

In case of loss or deficiency.

Reinspection.

SEC. 5. That where, upon reinspection at the port of entry, any case containing or purporting to contain distilled spirits for export is found to have been opened or tampered with, or where any mark, brand, stamp, label, or seal placed thereon or upon any bottle contained therein has been removed, changed, or willfully defaced, or where upon such reinspection any loss or discrepancy is found to exist as to the contents of any case so entered for export, the tax on the spirits contained in each such case at the time of its removal from warehouse shall be collected and paid.

Penalties.

SEC. 6. That any person who shall reuse any stamp provided under this Act after the same shall have been once affixed to a bottle as provided herein, or who shall reuse a bottle for the purpose of containing distilled spirits which has once been filled and stamped under the provisions of this Act without removing and destroying the stamp so previously affixed to such bottle, or who shall, contrary to the provisions of this Act or of the regulations issued thereunder remove or cause to be removed from any bonded warehouse any distilled spirits inspected or bottled under the provisions of this Act, or who shall bottle or case any such spirits in violation of this Act or of any regulation issued thereunder, or who shall, during the transportation and before the exportation of any such spirits, open or cause to be opened any case or bottle containing such spirits, or who shall willfully remove, change, or deface any stamp, brand, label, or seal affixed to any such case or to any bottle contained therein, shall for each such offense be fined not less than one hundred nor more than one thousand dollars, and be imprisoned not more than two years, in the discretion of the court, and such spirits shall be forfeited to the United States.

Counterfeiting,
etc., stamps.

SEC. 7. That every person who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under any provision of this Act, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or who shall make, use, sell, or have in his possession any paper in imitation of the paper used in the manufacture of any stamp required by this Act, shall on conviction be punished by a fine not exceeding one thousand dollars and by imprisonment at hard labor not exceeding five years.

Act of Aug. 8.
1890.

SEC. 8. That nothing in this Act shall be construed to exempt spirits bottled under the provisions of this Act from the operation of chapter seven hundred and twenty-eight of the public laws of the Fifty-first Congress, approved August eighth, eighteen hundred and ninety.

Act of August 8, 1890 (26 Stat., 313): That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being intro-

duced therein in original packages or otherwise. (*In re Rahrer*, 140 U. S., 545; 37 Int. Rev. Rec., 230.)

Using undersized bottles or underfilling bottles when bottling spirits in bond prohibited. Suspension of stamp issue and forfeiture of goods in certain cases. (Circular letter, Oct. 6, 1897; 43 Int. Rev. Rec., 374.)

Time for completing the processes of bottling spirits in bond. (Vol. 1, Treas. Dec. (1898) No. 18975.)

Removal of packages of spirits to bottling warehouse to settle during the night. (Vol. 1, Treas. Dec. (1898), No. 19058. See circular 521 and vol. 1, *ibid* (1899), No. 20508.

Regulations, Series 7, No. 28.—Relative to the bottling of distilled spirits in bond under act of March 3, 1897.

Supplement No. 1: Additional regulations and instructions concerning bottling of distilled spirits in bond.

Supplement No. 2: Instructions concerning proceedings at ports of export relative to the exportation of bottled distilled spirits in bond.

CHAPTER FIVE.

FERMENTED LIQUORS.

Sec.	Sec.
3335. Brewer's notice.	3346 (amended). Making, selling, or using false or counterfeit stamps or permits, reusing stamps, having removed stamps in possession, selling same; penalty.
3336 (amended). Bond.	3347. Sour malt liquors, how removable without stamps.
3337. Books and monthly statement.	3348. Brewers selling at retail at brewery.
[3337a.] Section 3337 construed. Assessment.	3349. Packages to be marked; penalty. One brewer purchasing from another.
3338. Monthly verification of entries in books.	3350. Permit to carry on business at another place on account of accident.
3339. As amended by section 1 of act of June 13, 1898 [3339a]. Tax. Fractional parts of a barrel, how estimated.	3351. Unfermented worts sold to other brewers.
[3339b.] Gallon defined.	3352. Fermented liquor removed from brewery without payment of tax forfeited. Absence of stamps to be notice and evidence.
3340 (amended). Evading tax, making or procuring false entries, etc.; penalty.	3353. Removal or defacement of stamps; penalty.
3341. As amended by section 9, act of July 24, 1897. Stamps. Permits. Deduction.	3354 (amended). Withdrawing fermented liquor from unstamped packages for bottling, or bottling on brewery premises; penalty. Fermented liquor permitted to be removed from brewery through pipe or conduit for bottling only.
3342 (amended). Stamps, how procured, affixed, and canceled. Penalty for fraud and neglect.	Act of June 18, 1890. Removal of fermented liquors for export without payment of tax.
3343. Selling, removing, or buying fermented liquor in packages without stamp or with twice-used stamp; penalty.	
3344. Drawing fermented liquor from package without stamp or without defacing stamp; penalty.	
3345. Removal for storage without stamps; penalties.	

Brewer's notice of business.

SEC. 3335. Every brewer shall, before commencing or continuing business, file with the collector, or proper deputy collector, of the district in which he designs to carry it on a notice in writing, stating the name of the person, company, corporation, or firm, the names of the members of any such company or firm, the places of residence of such persons, a description of the premises on which the brewery is situated, and of his or their title thereto, and the name of the owner thereof.

Bond.

SEC. 3336, as amended by the act of April 29, 1886 (24 Stat., 15). Every brewer, on filing notice as aforesaid of his intention to commence or continue business, * * * shall execute a bond to the United States, to be approved by the collector of the district, in a sum equal to *three* times the amount of the tax which, in the opinion of the collector, said brewer will be liable to pay during any one month, and conditioned that he shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, lager-beer, ale, porter, and other fermented liquors made by or for him, before the same is sold or removed for consumption or sale, except as hereinafter provided; and that he shall keep, or cause to be

kept, a book, in the manner and for the purposes herein-after specified, which shall be open to inspection by the proper officers, as by law required; and that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the manufacture and sale of any malt liquors aforesaid; *and he shall execute a new bond once in four years and whenever required so to do by said collector, in the amount above named and conditioned as above provided, which bond shall be in lieu of any former bond or bonds of such brewer in respect to all liabilities accruing after its approval by said collector.*

Definition of brewer and brewer's special tax. (§ 3244, p. 126.)

In case of incorporated companies the bond must be executed in their corporate capacity and under their corporate seals and signatures.

In case of a brewing company not incorporated the name of the firm as well as of each member thereof must be recited in the bond, which should be signed by each member of the firm.

Executors, administrators, and assignees continuing the business must execute a new bond.

SEC. 3337. Every person who owns or occupies any brewery, or premises used or intended to be used for the purpose of brewing or making such fermented liquors, or who has such premises under his control or superintendence, as agent for the owner or occupant, or has in his possession or custody any brewing materials, utensils, or apparatus, used or intended to be used on said premises in the manufacture of beer, lager-beer, ale, porter, or other similar fermented liquors, either as owner, agent, or superintendent, shall, from day to day, enter, or cause to be entered, in a book to be kept by him for that purpose, the kind of such malt liquors, the estimated quantity produced in barrels, and the actual quantity sold or removed for consumption or sale in barrels or fractional parts of barrels. He shall also, from day to day, enter, or cause to be entered, in a separate book to be kept by him for that purpose, an account of all materials by him purchased for the purpose of producing such fermented liquors, including grain and malt.

Brewer's books.

And he shall render to the collector, or the proper deputy collector, on or before the tenth day of each month, a true statement, in writing, in duplicate, taken from his books, of the estimated quantity in barrels of such malt liquors brewed, and the actual quantity sold or removed for consumption or sale during the preceding month; and shall verify, or cause to be verified, the said statement, and the facts therein set forth, by oath, to be taken before the collector of the district, or proper deputy collector, according to the form required by law.

Monthly statement.

Said books shall be open at all times for the inspection of any collector, deputy collector, inspector, or revenue agent, who may take memorandums and transcripts therefrom.

United States v. Obermeyer (5 Ben., 541; 15 Int. Rev. Rec., 83)*
United States v. Miller (16 Int. Rev. Rec., 25.)

Brewers' returns.—Returns made by brewers of the amount of beer manufactured and sold by them are made under compulsion of law for but one purpose, namely, the collection of revenue for the United States, and copies thereof are not permitted to be furnished to any persons for other purposes. (Vol. 1, Treas. Dec. (1898), No. 19443.)

Sec. 3337, R. S., construed.

Quantity of material used not evidence for purpose of taxation, of quantity of liquor produced.

Tax to be paid as provided in §3339, R. S.

Cases of fraud excepted.

No change of rules of law as to evidence in suits, etc.

[SEC. 3337a.] *Act of May 13, 1876 (19 Stat., 53).* That nothing contained in section three thousand three hundred and thirty-seven of the Revised Statutes of the United States shall be so construed as to authorize an assessment upon the quantity of materials used in producing or purchased for the purpose of producing, fermented or malt liquors, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of liquor produced; but the tax on all beer, lager-beer, ale, porter, or other similar fermented liquor, brewed or manufactured, and sold or removed for consumption or sale, shall be paid as provided in section three thousand three hundred and thirty-nine of said statutes, and not otherwise:

Provided, That this act shall not apply to cases of fraud. *And provided further*, That nothing in this act shall have the effect to change the present rules of law respecting evidence in any prosecution or suit.

Bergdoll v. Pollock, collector (95 U. S., 337; 24 Int. Rev. Rec., 2.)

SEC. 3338. The entries made in such books shall, on or before the tenth day of each month, be verified by the oath of the person by whom they are made. The said oath shall be written in the book at the end of such entries, and be certified by the officer administering the same, and shall be in form as follows:

Monthly verification of entries in books.

I do swear (or affirm) that the foregoing entries were made by me; and that they state truly, according to the best of my knowledge and belief, the estimated quantity of the whole amount of such malt liquors brewed, and the actual quantity sold, and the actual quantity removed, from the brewery owned by —, in the county of —; and, further, that I have no knowledge of any matter or thing required by law to be stated in said entries which has been omitted therefrom.

And the owner, agent, or superintendent aforesaid shall also, in case the original entries made in his book were not made by himself, subjoin thereto the following oath, to be taken in manner as aforesaid:

I do swear (or affirm) that, to the best of my knowledge and belief, the foregoing entries fully set forth all the matters therein required by law; and that the same are just and true, and that I have taken all the means in my power to make them so.

Brewer required to enter all malt liquors in his book. "Malt liquor" and "fermented liquor" used synonymously. (First circuit (Mase.), 1874, *United States v. Dooley*, 21 Int. Rev. Rec., 115.)

A book of general accounts kept by a brewer in conducting his business can not be deemed a book of entries of materials purchased, or such a book as the statute requires. (*United States v. Bellingstein*, 16 Int. Rev. Rec., 92.)

Tax on fermented liquors.

Amendment of June 13, 1898.

SEC. 3339, as amended by section 1, act of June 13, 1898 (30 Stat., 448). There shall be paid on all beer, lager-beer, ale, porter, and other similar fermented liquors, brewed or manufactured and sold, or stored in warehouse or removed for consumption or sale, within the United States, by whatever name such liquors may be called, a tax of two dollars for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for any fractional part of a barrel.

In estimating and computing such tax, the fractional parts of a barrel shall be halves, thirds, quarters, sixths, and eighths; and any fractional part of a barrel containing less than one-eighth shall be accounted one-eighth; more than one-eighth, and not more than one-sixth, shall be accounted one-sixth; more than one-sixth, and not more than one-fourth, shall be accounted one-fourth; more than one-fourth, and not more than one-third, shall be accounted one-third; more than one-third, and not more than one-half, shall be accounted one-half; more than one-half, and not more than one barrel, shall be accounted one barrel; and more than one barrel, and not more than sixty-three gallons, shall be accounted two barrels, or a hogshead. The said tax shall be paid by the owner, agent, or superintendent of the brewery or premises in which such fermented liquors are made, and in the manner and at the time hereinafter specified.

Fractional parts of a barrel, how estimated.

[SEC. 3339a.] *Section 1, act of June 13, 1898 (30 Stat., 448). That there shall be paid, in lieu of the tax of one dollar now imposed by law, a tax of two dollars on all beer, lager beer, ale, porter, and other similar fermented liquors, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, for every barrel containing not more than thirty-one gallons; and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law. And section thirty-three hundred and thirty-nine of the Revised Statutes is hereby amended accordingly:*

Tax of \$2.

Provided, That a discount of seven and one-half per centum shall be allowed upon all sales by collectors to brewers of the stamps provided for the payment of said tax:

7½ per cent discount.

Provided further, That the additional tax imposed in this section on all fermented liquors stored in warehouse to which a stamp has been affixed shall be assessed and collected in the manner now provided by law for the collection of taxes not paid by stamps.

Acts imposing tax on fermented liquors and rates of tax.

Per barrel,	
From September, 1862, to March 3, 1863 (act July 1, 1862)	\$1.00
From March 3, 1863, to March 31, 1864 (act March 3, 1863) .....	.60
From April 1, 1864, to June 13, 1898	1.00
From June 14, 1898	2.00

The act of March 3, 1863, provided that the tax on fermented liquors should be 60 cents per barrel from the date of the passage of that act to April 1, 1864. Hence the tax of 60 cents per barrel having expired by limitation April 1, 1864, the tax of \$1 per barrel under act of July 1, 1862, was again revived, which rate was increased to \$2 under act of June 13, 1898.

The act of July 13, 1866 (14 Stat., 98), changed the mode of assessing and collecting the tax on fermented liquors, and made the tax on them after September 1, 1866, payable by stamps.

Hop beer. (Vol. 2, Treas. Dec. (1898), No. 20233, p. 771.)

Weiss beer taxable. (Special No. 153; 29 Int. Rev. Rec., 313.)

Imported malt liquors. (§ 11, act of March 1, 1879, p. 214.)

Action by collectors upon change in rate of tax on fermented liquors. (Circular letter, June 9, 1898; vol. 1, Treas. Dec. No. 19475.)

Regulations under act of June 13, 1898, concerning the additional tax on liquors stored in warehouse. (Circular No. 108; Int. Rev., No. 496, June 14, 1898; Vol. 1, Treas. Dec. No. 19480.)

Opinion of the Attorney-General on the question of the liability of retail dealers to the additional tax of \$1 a barrel on fermented malt liquor bought by them prior to June 14, 1898, and held in stock by them on that date, Dec. 27, 1898. (Vol. 1, Treas. Dec. No. 20464.)

Additional opinion of Attorney-General in regard to the tax on fermented liquors under the provisions of the war-revenue act, December 30, 1898. (Vol. 1, Treas. Dec. (1899) No. 20488.)

The act of June 13, 1898, which amends section 3339, Revised Statutes, and imposes an additional tax on fermented liquors "brewed or manufactured and sold or stored in warehouse," etc., does not apply to fermented liquors stored in warehouse by dealers other than brewers, it being provided by section 3339 that the tax "shall be paid by the owner, agent, or superintendent of the brewery or premises in which such fermented liquors are made." (VI Comp. Dec., 196.)

A liquor made from barley malt, fermented by means of a wine yeast, is a fermented malt liquor, for the manufacture of which for sale the special tax of a brewer is required to be paid, and on which tax is imposed by section 3339, Revised Statutes, notwithstanding the fact that by the use of a wine yeast instead of a beer yeast it has the appearance and taste of wine. (Vol. 1, Treas. Dec. (1898), No. 19025.)

Gallon defined.

[SEC. 3339b.] *Section 21, act of March 1, 1879 (20 Stat., 327). That the word "gallon", wherever used in the internal-revenue law, relating to beer, lager-beer, ale, porter, and other similar fermented liquors, shall be held and taken to mean a wine-gallon, the liquid measure containing two hundred and thirty-one cubic inches.*

The standard gallon of the United States contains 231 cubic inches or 8.3339 pounds avoirdupois of distilled water at its maximum density and with the barometer at 30 inches. (Webster's Dictionary.)

The old beer gallon of 282 cubic inches was recognized as the standard for domestic malt liquors before the act of March 1, 1879. That act was passed to make the gallon conform to the standard in the customs service and to that recognized by the mercantile community. (16 Op. Atty. Gen., 361; *Nichols v. Beard*, 29 Int. Rev. Rec., 46.)

Evading tax, making or procuring false entries, etc.; penalty.

SEC. 3340, as amended by section 10, act of March 1, 1879 (20 Stat., 327). Every owner, agent, or superintendent of any brewery, vessels, or utensils used in making fermented liquors, who evades, or attempts to evade, the payment of the tax thereon, or fraudulently neglects or refuses to make true and exact entry and report of the same in the manner required by law, or to do, or cause to be done, any of the things by law required to be done by him * * *, or who intentionally makes false entry in said book or in said statement, or knowingly allows or procures the same to be done, shall forfeit, for every such offense, all the liquors made by him or for him, and all the vessels, utensils, and apparatus used in making the same, and be liable to a penalty of not less than five hundred nor more than one thousand dollars, to be recovered with costs of suit, and shall be deemed guilty of a misdemeanor, and be imprisoned for a term not exceeding one year.

Penalty for not keeping books, etc.

And every brewer who neglects to keep books, or refuses to furnish the account and duplicate thereof as provided by law, or refuses to permit the proper officer to examine

the books in the manner provided, shall, for every such refusal or neglect, forfeit and pay the sum of three hundred dollars.

The words "as aforesaid" were stricken out in the seventh line by section 10, act March 1, 1879 (20 Stat., 327).

Brewer liable for neglecting to keep books, although there was no criminal intent. (*United States v. Miller*, 16 Int. Rev. Rec., 25; *United States v. Foster*, 19 *ibid.*, 5; *United States v. Bellingsstein*, 16 *ibid.*, 92; *Archbold's Crim. Prac.*, p. 395.)

SEC. 3341, as amended by section 9, act of July 24, 1897 (30 Stat., 151). Stamps, how supplied and sold.
The Commissioner of Internal Revenue shall cause to be prepared, for the payment of such tax, suitable stamps denoting the amount of tax required to be paid on the hogsheads, barrels, and halves, thirds, quarters, sixths, and eighths of a barrel of such fermented liquors (and shall also cause to be prepared suitable permits for the purpose hereinafter mentioned), and shall furnish the same to the collectors of internal revenue, who shall each be required to keep on hand at all times a sufficient supply of permits and a supply of stamps equal in amount to two months' sales thereof, if there be any brewery or brewery warehouse in his district; and such stamps shall be sold, and permits granted and delivered by such collectors, only to the brewers of their district, respectively. Permits.

Such collectors shall keep an account of the number of permits delivered and of the number and value of the stamps sold by them to each brewer.

As to stamps, see section 3446, amended, p. 339.

Relative to sale to sheriff of stamps for tax on beer levied upon or attached by him. (Letter to Collector Johnson, February 15, 1894; 40 Int. Rev. Rec., 53.)

Under the act of July 24, 1897, which went into effect on that date, a brewer was required to pay the full face value of the stamps purchased, without deduction of the $7\frac{1}{2}$ per cent discount previously allowed by section 3341, Revised Statutes.

The act of June 13, 1898, restored the right to the discount of $7\frac{1}{2}$ per cent on stamps purchased by brewers, [Sec. 3339 *a*,] p. 227.

No discount allowable on stamps purchased July 24, 1897—Discount not allowable on beer stamps unless purchased and used by brewers prior to the taking effect of the act of July 24, 1897, which repealed the provision allowing such deductions. (Vol. 1, Treas. Dec. (1898), No. 19087.)

A collector's duty, as prescribed by section 3341, Revised Statutes, is to keep on hand stamps equal in amount to two months' sale thereof. The law does not permit transactions for future delivery. The agency is limited to the stock on hand. (*The American Brewing Company v. United States* (1898), 33 Ct. Clms., 348; Vol. 1, Treas. Dec. (1898), No. 19248.)

SEC. 3342, as amended by act of March 3, 1875 (18 Stat., 484). That every brewer shall obtain, from the collector of the district in which his brewery or brewery-warehouse is situated, and not otherwise unless such collector shall fail to furnish the same upon application to him, the proper stamps, and shall affix, upon the spigot-hole in the head of every hogshead, barrel, keg, or other receptacle in which any fermented liquor is contained, when sold or removed from such brewery or warehouse, (except in case of removal under permit, as hereinafter provided,) a stamp denoting the amount of the tax required upon such fermented liquor, which stamp shall be destroyed by driving through the same the faucet Stamps, how procured, affixed, and canceled.

through which the liquor is to be withdrawn, or an air-faucet of equal size, at the time the vessel is tapped, in case the vessel is tapped through the other spigot-hole, (of which there shall be but two, one in the head and one in the side,) and shall, also, at the time of affixing such stamp, cancel the same by writing or imprinting thereon the name of the person, firm, or corporation by whom such liquor was made, or the initial letters thereof, and the date when canceled.

Penalty for fraud or neglect.

Every brewer who refuses or neglects to affix and cancel the stamps required by law in the manner aforesaid, or who affixes a false or fraudulent stamp thereto, or knowingly permits the same to be done, shall pay a penalty of one hundred dollars for each barrel or package on which such omission or fraud occurs, and be imprisoned not more than one year.

As to spigot-holes. (32 Int. Rev. Rec., 317.)

Where the law prescribes as punishment for an offense both a money penalty and imprisonment, it is not true that the penalty can only be enforced by indictment. The Government can maintain an action of debt for the money penalty. (*United States v. Foster*, 2 Biss., 453; 19 Int. Rev. Rec., 5.)

It is sufficient as a general rule to charge an offense in the language of the statute. (*United States v. Schimer*, 5 Biss., 195.)

Selling, removing, or buying fermented liquor in packages without stamp, or false stamp, or with twice-used stamp; penalty.

SEC. 3343. Whenever any brewer, cartman, agent for transportation, or other person, sells, removes, receives, or purchases, or in any way aids in the sale, removal, receipt, or purchase, of any fermented liquor contained in any hogshead, barrel, keg, or other vessel from any brewery or brewery warehouse, upon which the stamp, or permit, in case of removal, required by law, has not been affixed, or on which a false or fraudulent stamp, or permit, in case of removal, is affixed, with knowledge that it is such, or on which a stamp, or permit, in case of removal, once canceled, is used a second time, he shall be fined one hundred dollars and imprisoned for not more than one year.

Drawing fermented liquor from package without stamp, or with false stamp, or without defacing stamp; penalty.

SEC. 3344. Whenever any retail dealer, or other person, withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel containing the same, without destroying or defacing the stamp affixed thereon, or withdraws or aids in the withdrawal of any fermented liquor from any hogshead, barrel, keg, or other vessel, upon which the proper stamp has not been affixed or on which a false or fraudulent stamp is affixed, he shall be fined one hundred dollars and imprisoned not more than one year.

See section 3455, p. 344, as to selling, receiving, etc., empty stamped packages.

Removal for storage without stamps.

SEC. 3345. Any brewer may remove or transport, or cause to be removed or transported, from his brewery or other place of manufacture to a depot, warehouse, or other place used exclusively for storage or sale in bulk, and occupied by him, in another part of the same collection-district, or in another collection-district, but to no other place, malt liquor of his own manufacture, known as lager-beer, in quantities of not less than six barrels in one vessel, and malt liquor of his own manufacture, known as ale or porter, or any other malt liquor of his own manufacture not heretofore men-

tioned, in quantities not less than fifty barrels at a time, without affixing the proper stamps on said vessels of lager-beer, ale, porter, or other malt liquor, at the brewery or place of manufacture, under a permit, which shall be granted, upon application, by the collector of the district in which said malt liquor is manufactured, and under such regulations as the Commissioner of Internal Revenue may prescribe; and thereafter the manufacturer of said malt liquor shall stamp the same, when it leaves such depot or warehouse, in the same manner and under the same penalties and liabilities as when stamped at the brewery as herein provided.

Permit.

And the collector of the district in which such depot or warehouse is situated shall furnish the manufacturer with the stamps for stamping the same, as if the said malt liquor had been manufactured in his district. And said permit must be affixed to every such vessel or cask so removed, and canceled or destroyed in such manner as the Commissioner of Internal Revenue may prescribe, and under the same penalties and liabilities as provided herein as to stamps.

SEC. 3346, *as amended by section 5, act of March 1, 1879 (20 Stat., 327)*. Every person who makes, sells, or uses any false or counterfeit stamp or permit, or die for printing or making stamps or permits, which is in imitation of or purports to be a lawful stamp, permit, or die of the kind before mentioned in this chapter, or who procures the same to be done, and every person who shall remove, or cause to be removed, from any cask or package of fermented liquors, any stamp denoting the tax thereon, with intent to re-use such stamp, or who, with intent to defraud the revenue, knowingly uses, or permits to be used, any stamp removed from another cask or package, or receives, buys, sells, gives away, or has in his possession, any stamp so removed, or makes any fraudulent use of any stamp for fermented liquors, shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than three years.

Making, selling, or using false stamps, permits, or dies.

Removing, re-using stamps, selling or having in possession removed stamps; penalty.

All officers are instructed that canceled beer stamps, or stamps that have been once used, found in the hands of a brewer or other person, should be seized, marked for identification, and deposited with the collector for use in a prosecution to be instituted under section 3346, R. S., as amended. (Circular No. 407, August 25, 1893.)

SEC. 3347. When fermented liquor has become sour or damaged, so as to be incapable of use as such, brewers may sell the same for manufacturing purposes, and may remove the same to places where it may be used for such purposes, in casks, or other vessels, unlike those ordinarily used for fermented liquors, containing respectively not less than one barrel each, and having the nature of their contents marked upon them, without affixing thereon the permit, stamp or stamps required.

Sour malt liquors removable in peculiar packages without stamps.

Section 3347, Revised Statutes, providing for the sale by a brewer of sour beer in peculiar packages without a stamp does not confer the privilege of removing a stamp for re-use in the case of beer soured or spoiled after being stamped. *A stamp once applied to a package can never legally be removed and applied to another.*

Brewers selling at retail at brewery to affix stamps and keep account.

SEC. 3348. Every brewer who sells fermented liquor at retail at the brewery or other place where the same is made, shall affix and cancel the proper stamps upon the hogsheads, barrels, kegs, or other vessels in which the same is contained, and shall keep an account of the quantity so sold by him, and of the number and size of the hogsheads, barrels, kegs, or other vessels in which the same has been contained, and shall make a report thereof, verified by oath, monthly to the collector.

Name of manufacturer, etc., to be marked on packages; penalty for removing marks, etc.

SEC. 3349. Every brewer shall, by branding, mark or cause to be marked upon every hogshead, barrel, keg, or other vessel containing the fermented liquor made by him, before it is sold or removed from the brewery or brewery warehouse, or other place of manufacture, the name of the person, firm, or corporation by whom such liquor was manufactured, and the place of manufacture; and every person other than the owner thereof, or his agent authorized so to do, who intentionally removes or defaces such marks therefrom, shall be liable to a penalty of fifty dollars for each cask or other vessel from which the mark is so removed or defaced:

Brewer purchasing fermented liquor from another brewer.

Provided, That when a brewer purchases fermented liquor finished and ready for sale from another brewer, in order to supply the customers of such purchaser, the purchaser may, upon written notice to the collector of his intention so to do, and under such regulations as the Commissioner of Internal Revenue may prescribe, furnish his own vessels, branded with his name and the place where his brewery is situated, to be filled with the fermented liquor so purchased, and to be so removed; the proper stamps to be affixed and canceled, as aforesaid, by the manufacturer before removal.

See section 3244, subdivision fifth, p. 125, for liability to special tax in such cases.

Permit to carry on business at another place on account of accident.

SEC. 3350. Whenever, in the opinion of the collector of any district, it becomes requisite or proper, by reason of an accident to any brewery therein, by fire or flood, or of such brewery undergoing repairs, or of other circumstances, that the brewer carrying on the same shall be permitted to conduct his business wholly or in part at some other place within such district or an adjoining district for a temporary period, it shall be lawful for such collector, under such regulations and subject to such limitation of time as the Commissioner of Internal Revenue may prescribe, to issue a permit to such brewer, authorizing him to conduct his business wholly or in part, according to the circumstances, at such other place, for a period to be stated in such permit; and such brewer shall not be required to pay another special tax for the purpose.

Unfermented worts sold to other brewers; how tax shall be paid.

SEC. 3351. When malt liquor or tun liquor, in the first stages of fermentation, known as unfermented worts, of whatever kind, is sold by one brewer to another for the purpose of producing fermentation or enlivening old or stale ale, porter, lager-beer, or other fermented liquors, it shall not be liable to a tax to be paid by the seller thereof, but the tax on the same shall be paid by the purchaser thereof, when the same, having been mixed with the old or stale beer, is sold by him as provided by law, and such sale

or transfer shall be subject to such restrictions and regulations as the Commissioner of Internal Revenue may prescribe.

SEC. 3352. The ownership or possession by any person of any fermented liquor after its sale or removal from the brewery or warehouse, or other place where it was made, upon which the tax required has not been paid, shall render such liquor liable to seizure wherever found, and to forfeiture, removal under said permits excepted.

Possession of fermented liquor after removal from warehouse when tax not paid cause of forfeiture.

And the absence of the proper stamps from any hogshead, barrel, keg, or other vessel containing fermented liquor, after its sale or removal from the brewery where it was made, or warehouse as aforesaid, shall be notice to all persons that the tax has not been paid thereon, and shall be prima-facie evidence of the non-payment thereof.

Absence of stamps to be notice and evidence.

Where a lot of ale, while still within the brewery in which it was made, was seized under judicial process emanating from a State court as a forfeiture to the State and is in the custody of the sheriff awaiting the judgment of the court: *Held*, that possession of the sheriff can not be legally interfered with by any internal revenue or other officers of the United States. (15 Op. Atty. Gen., 370.)

SEC. 3353. Every person, other than the purchaser or owner of any fermented liquor, or person acting on his behalf, or as his agent, who intentionally removes or defaces the stamp or permit affixed upon the hogshead, barrel, keg, or other vessel, in which the same is contained, shall be liable to a fine of fifty dollars for each such vessel from which the stamp or permit is so removed or defaced, and to render compensation to such purchaser or owner for all damages sustained by him therefrom.

Removal or defacement of stamps by others than the owner-penalty.

SEC. 3354, as amended by act of June 18, 1890 (26 Stat., 169). Every person who withdraws any fermented liquor from any hogshead, barrel, keg, or other vessel upon which the proper stamp has not been affixed, for the purpose of bottling the same, or who carries on, or attempts to carry on, the business of bottling fermented liquor in any brewery or other place in which fermented liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of five hundred dollars, and the property used in such bottling or business shall be liable to forfeiture:

Withdrawing liquor from unstamped packages for bottling, or bottling on brewery premises.

Penalty.

Provided, however, That this section shall not be construed to prevent the withdrawal and transfer of fermented liquors from any of the vats in any brewery, by way of a pipe line or other conduit, to another building or place, for the sole purpose of bottling the same; such pipe line or conduit to be constructed and operated in such manner, and with such cisterns, vats, tanks, valves, cocks, faucets, and gauges, or other utensils or apparatus, either on the premises of the brewery or the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner of Internal Revenue, subject to the approval of the Secretary of the Treasury, and all locks and seals prescribed shall be provided by the Commissioner of Internal Revenue, at the expense of the United States:

Removal of fermented liquor to bottling establishment by pipe line or conduit.

Cancellation
and defacement
of stamps.

Provided further, That the tax imposed in section thirty-three hundred and thirty-nine of the Revised Statutes of the United States shall be paid on all fermented liquor removed from a brewery to a bottling house by means of a pipe or conduit, at the time of such removal, by the cancellation and defacement, by the collector of the district, or his deputy, in the presence of the brewer, of the number of stamps denoting the tax on the fermented liquor thus removed. The stamps thus cancelled and defaced shall be disposed of and accounted for in the manner directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Penalties and
forfeitures.

And any violation of the rules and regulations hereafter prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in pursuance of these provisions, shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house who removes, or connives at the removal of, any fermented liquor through a pipe line or conduit, without payment of the tax thereon, or who attempts in any manner to defraud the revenue as above, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same.

Beer intended for bottling must be drawn into stamped packages and removed from the brewery, and the bottling premises must be so separated from the brewery that the beer must be carried upon a street or road which is a public highway, actually and commonly used as a thoroughfare by the public, in its passage from the brewery to the bottling establishment. (Int. Rev. Reg., Series 7, No. 6, revised, under "Bottling.")

Concerning the transfer of fermented liquors from a brewery by way of pipe line or conduit for the sole purpose of bottling the same. (Regulations, Series 7, No. 6, revised, Supplement No. 1, July 3, 1890; 36 Int. Rev. Rec., 222, and Supplement No. 2, Sept. 22, 1890.)

EXPORTATION OF FERMENTED LIQUORS.

Exportation of
fermented liq-
uors.

Act of June 18, 1890 (26 Stat., 162). That from and after the first day of January, eighteen hundred and ninety-one, fermented liquor may be removed from the place of manufacture, or storage, for export to a foreign country, without payment of tax, in such packages and under such regulations, and upon the giving of such notices, entries, bonds, and other security, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe; and no drawback of tax shall be allowed on fermented liquor exported on and after the first day of January, eighteen hundred and ninety-one, unless entered for exportation prior to such date.

No drawback.

This operates as a repeal, on and after January 1, 1891, of section 3441, R. S., as amended, p. 338. (Regulations, Series 7, No. 10, revised, October 23, 1890, and Supplement No. 1, January 12, 1892.)

CHAPTER SIX.

TOBACCO AND SNUFF.

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| <p>Sec. 69. Act of August 28, 1894. Manufacturer of tobacco defined.</p> <p>27. Act of October 1, 1890, amended. Restrictions upon farmers removed.</p> <p>3355 (amended). Manufacturer's statement.</p> <p>Bond and certificate; penalties.</p> <p>3356. Sign to be put up by manufacturer; penalty for omission.</p> <p>3357 (amended). Record of manufacturers to be kept by collector.</p> <p>3358. Annual inventory. Books and monthly abstracts. Taxes on cigars, cigarettes, and size of packages of tobacco; penalty.</p> <p>3359. Dealers in leaf tobacco to render statement of sales when demanded. Examination of books. Destruction of unsalable tobacco and cigars.</p> <p>3360 (amended). Books of dealer in leaf tobacco; penalty.</p> <p>3361. Repealed by section 69, act October 1, 1890.</p> <p>3362 (amended). Tobacco and snuff, how put up.</p> <p>3363. Tobacco and snuff to be sold only in prescribed packages; penalty. Exception.</p> <p>3364 (amended). Caution label; penalty.</p> <p>3365. Obsolete.</p> <p>3366. Purchasing tobacco not branded or stamped; penalty.</p> <p>3367. Buying tobacco from manufacturer who has not paid special tax.</p> <p>3368. (as amended) [3368a.]. Tax on tobacco and snuff.</p> <p>3369. Stamps, how prepared, furnished, and sold.</p> <p>Stamping forfeited tobacco or tobacco sold under distraint.</p> <p>3370. Tobacco manufactured by one person for another or on shares; fraud in such cases; penalty.</p> <p>3371 (amended). Assessment of tax on tobacco, snuff, and cigars removed without stamps.</p> | <p>Sec. 3372. Removing unlawfully, selling without stamps, or payment of tax, or giving bond, making false entries; forfeiture.</p> <p>3373. Absence of stamp evidence of non-payment; forfeiture.</p> <p>3374. Removing, except in proper packages or without stamp, selling unlawfully, etc.; penalty.</p> <p>3375. Affixing false stamps or stamps before used; penalty.</p> <p>3376. Stamps on empty packages to be destroyed; buying, selling, or using the same; penalty.</p> <p>3377 (amended). Imported tobacco and snuff; also scraps, cuttings, and clippings.</p> <p>3378. All tobacco deemed to have been manufactured after July 20, 1868.</p> <p>3379. Obsolete.</p> <p>3380. Selling tobacco falsely represented to be made and tax paid before July 20, 1868; penalty.</p> <p>3381. Peddlers of tobacco; statement and bond.</p> <p>3382. Peddlers of tobacco traveling with wagon.</p> <p>3383 (amended). Peddler to obtain and exhibit certificate, etc.</p> <p>3384 (amended). Peddling tobacco unlawfully; penalty.</p> <p>3385 (amended). Exportation of manufactured tobacco, etc.; penalty for relanding, etc.</p> <p>[3385a.] Transportation bond, etc.; export bond, etc.</p> <p>[3385b.] Regulations authorized.</p> <p>[3385c.] Reimported tobacco.</p> <p>3386 (amended). Drawback on exported tobacco, snuff, and cigars.</p> <p>[3386a.] Fraudulent claims for drawback.</p> <p>16. Act of June 26, 1884, amended by section 14, act of July 24, 1897. Shippers of vessels.</p> |
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SEC. 69. *Act of August 28, 1894 (28 Stat., 509).* Every person ^{Manufacturers of tobacco defined.} whose business it is to manufacture tobacco or snuff for himself, or who employs others to manufacture tobacco or snuff, whether such manufacture be by cutting, pressing, grinding, crushing, or rubbing of any raw or leaf-tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco or snuff, or the putting up for use or consumption of scraps, waste, clippings, stems, or deposits of tobacco resulting from any process of han-

dling tobacco, or by the working or preparation of leaf-tobacco, tobacco stems, scraps, clippings, or waste, by sifting, twisting, screening, or any other process, shall be regarded as a manufacturer of tobacco.

Retail leaf dealers to be regarded as manufacturers.

Every person shall also be regarded as a manufacturer of tobacco whose business it is to sell leaf tobacco in quantities less than a hogshead, case, or bale; or who sells directly to consumers, or to persons other than duly registered dealers in leaf tobacco, or duly registered manufacturers of tobacco, snuff or cigars, or to persons who purchase in packages for export; and all tobacco so sold by such persons shall be regarded as manufactured tobacco, and such manufactured tobacco shall be put up and prepared by such manufacturer in such packages only as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe: *Provided*, That farmers and growers of tobacco who sell leaf tobacco of their own growth and raising shall not be regarded as manufacturers of tobacco; and so much of section three thousand two hundred and forty-four of the Revised Statutes of the United States, and acts amendatory thereof, as are in conflict with this Act, are hereby repealed:

Farmers and growers.

* * * * *

That section thirty-three hundred and sixty-one of the Revised Statutes is hereby repealed.

As to special tax of manufacturers of tobacco, see p. 140.

Restrictions upon farmers removed.

SEC. 27. *Act of October 1, 1890 (26 Stat., 618), as amended by section 69, act of August 28, 1894 (28 Stat., 509).* That all provisions of the statutes imposing restrictions of any kind whatsoever upon farmers and growers of tobacco in regard to the sale of their leaf tobacco, and the keeping of books, and the registration and report of their sales of leaf tobacco, or imposing any tax on account of such sales are hereby repealed.

Manufacturer's statement, bond, and certificates.

SEC. 3355, *as amended by section 14, act of March 1, 1879 (20 Stat., 327).* Every person, before commencing, or, if he has already commenced, before continuing, the manufacture of tobacco or snuff, shall furnish, without previous demand therefor, to the collector of the district where the manufacture is to be carried on, a statement in duplicate, subscribed under oath, setting forth the place, and if in a city, the street and number of the street, where the manufacture is to be carried on; the number of cutting-machines, presses, snuff-mills, hand-mills, or other machines; the name, kind, and quality of the article manufactured or proposed to be manufactured; and when the same is manufactured by him as agent for any other person, or to be sold and delivered to any other person under a special contract, the name and residence and business or occupation of the person for whom the said article is to be manufactured, or to whom it is to be delivered; and he shall give a bond, to be approved by the collector of the district, in the sum of not less than two thousand nor more than twenty thousand dollars, to be fixed by the collector of the district, according to the quantum of business proposed to be done by the manufacturer, with right of appeal by the manufacturer to

the Commissioner of Internal Revenue in respect to the amount of said bond, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the government of any tax on his manufactures; that he shall render truly and completely all the returns, statements, and inventories prescribed by law or regulations; that whenever he adds to the number of cutting-machines, presses, snuff-mills, hand-mills, or other mills or machines as aforesaid, he shall immediately give notice thereof to the collector of the district; that he shall stamp, in accordance with law, all tobacco and snuff manufactured by him before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any manufactured tobacco or snuff which has not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of tobacco or snuff. Additional sureties may be required by the collector from time to time.

And every manufacturer shall obtain a certificate from the collector of the district, who is hereby directed to issue the same, setting forth the kind and number of machines, presses, snuff mills, hand mills, or other mills and machines as aforesaid; which certificate shall be posted in a conspicuous place within the manufactory.

And every tobacco-manufacturer who neglects or refuses to obtain such certificate, or to keep the same posted as hereinbefore provided, shall be fined not less than one hundred dollars nor more than five hundred dollars. And every person who manufactures tobacco or snuff of any description without first giving bond, as herein required, shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned for not less than one nor more than five years.

Penalties.

A stockholder in a corporation who qualifies to possessing property other than stock in the corporation, sufficient to afford additional and adequate security, may be accepted as surety on the bond of the corporation doing business as manufacturer of tobacco or cigars. (43 Int. Rev. Rec., 286.)

The liability of the sureties on the bond of a manufacturer of tobacco, given in pursuance of this section, does not cease upon the expiration of his license as such manufacturer.

Revenue officers are not required to give notice of the expiration of a manufacturer's license. It is a matter within his knowledge, and of which he must take notice at his peril. (*United States v. Truesdell*, 2 Bond, 78; 5 Int. Rev. Rec., 102.)

A corporation manufacturing cigars, etc., must file with their bonds certified copy of charter and evidence of authority of officers to act. (43 Int. Rev. Rec., 365.)

Form 40, bond. (31 Int. Rev. Rec., 117.)

The manufacture and sale at retail of cigars and tobacco can not be lawfully carried on at the same time and at the same place. (16 Op. Atty. Gen., 89; 24 Int. Rev. Rec., 227.)

SEC. 3356. Every manufacturer of tobacco and snuff shall place and keep on the side or end of the building wherein his business is carried on, so that it can be distinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. And every person who neglects to comply

Sign to be put up by manufacturer; penalty for omission.

with the requirements of this section shall be fined not less than one hundred dollars or more than five hundred dollars.

Record of manufacturers of tobacco and snuff to be kept by collector.

SEC. 3357, as amended by section 23, act of October 1, 1890 (26 Stat., 620). Every collector shall keep a record, in a book or books provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal-revenue agents, of the name and residence of every person engaged in the manufacture of tobacco or snuff in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer, a copy of every inventory required by law to be made by such manufacturer, and an abstract of his monthly returns; and he shall cause the several manufactories of tobacco or snuff in his district to be numbered consecutively, which numbers shall not be thereafter changed, except for reasons satisfactory to himself and approved by the Commissioner of Internal Revenue.

Annual inventory of manufacturer.

SEC. 3358. Every person now or hereafter engaged in the manufacture of tobacco or snuff shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner of Internal Revenue, and verified by his own oath, of the quantity of each of the different kinds of tobacco, snuff-flour, snuff, stems, scraps, clippings, waste, tin foil, licorice, sugar, gum, and other materials held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first of January; setting forth what portions of said goods and materials, and what kinds were manufactured and produced by him, and what was purchased from others. The collector shall make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory, and shall verify the fact of such examination by oath, to be indorsed on or affixed to the inventory.

Books. Form No. 74.

And every such person shall keep a book or books, the forms of which shall be prescribed by the Commissioner of Internal Revenue, and enter therein daily an accurate account of all the articles aforesaid purchased by him, the quantity of tobacco, snuff, and snuff-flour, stems, scraps, clippings, waste, tin-foil, licorice, sugar, gum, and other material, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from the place of manufacture in bond, and to what district removed; also the number of net pounds of lumps of plug tobacco made in the lump room, and the number of packages and pounds thereof produced in the press-room each day. And he shall, on or before the tenth day of each month, furnish to the collector a true and complete abstract from such book, verifying the same by his oath, of all such purchases, sales, and removals made during the month next preceding.

Monthly abstracts. Form No. 62.

Penalty.

And whenever any such person refuses or willfully neglects to deliver the inventory, or keep the account, or furnish the abstract aforesaid, he shall be fined not less than five hundred dollars nor more than five thousand dollars,

and imprisoned not less than six months nor more than three years.

Case involving the forfeiture of the tobacco factory of C. H. Lilienthal, before Judge Blatchford and a jury. (U. S. District Court, S. D. of New York; 13 Int. Rev. Rec., 158.)

SEC. 3359. It shall be the duty of any dealer in leaf tobacco, or in any material used in manufacturing tobacco or snuff, on demand of any officer of internal revenue, to render a true and complete statement, under oath, of the quantity and amount of such leaf-tobacco or materials sold or delivered to any person named in such demand, and in case of refusal or neglect to render such statement, or if there is cause to believe such statement to be incorrect or fraudulent, the collector shall make an examination of persons, books, and papers, in the manner provided in relation to frauds and evasions.

Dealers in leaf tobacco to render statement of sales when demanded.

Examination of persons, books, and papers.

Sections 3163a p. 73 and 3173, p. 80.

SEC. 3360, as amended by section 14, act of March 1, 1879 (20 Stat., 327). Every dealer in leaf-tobacco shall make daily entries in two books kept for that purpose, one book to be furnished by the government, under such regulations as the Commissioner of Internal Revenue shall prescribe, of the number of hogsheads, cases, and pounds of leaf-tobacco purchased or received by him on assignment, consignment, transfer, or otherwise, and of whom purchased or received, and the number of hogsheads, cases, or pounds sold by him, with the name and residence, in each instance, of the person to whom sold, and, if shipped, to whom shipped, and to what district; one of these books shall be kept at his place of business, and shall be open at all hours to the inspection of any internal-revenue officer or agent, and the other shall, at the end of each and every year, and upon the discontinuance of business of any leaf dealer during any year, be handed over to the collector of his district for the use of the government. And every dealer in leaf-tobacco who willfully neglects or refuses to keep the books herein provided for, and in the manner which shall be prescribed by the Commissioner of Internal Revenue, or to transfer to the collector of his district, as herein provided, the duplicate copy containing his daily transactions, as aforesaid, shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not more than one year.

Leaf-tobacco dealers' books.
Record Form No. 59.

Penalty.

Regarding entries in leaf-dealers' books (27 Int. Rev. Rec., 5 and 29).

Dealers in leaf tobacco required to make entry in red ink on debit side of Book 59 of tobacco returned, and, after checking, the collector will omit reporting the sale on abstracts, Form 434 or 435. (Vol. 2, Treas. Dec. (1899), No. 21520.)

Any person who keeps leaf tobacco for sale is a dealer, and a single sale is sufficient to fix his character as such. (United States v. Damiani & Co., 11 Int. Rev. Rec., 5.)

Definition of dealer in leaf tobacco. (See § 3244, par. 6, p. 128.)

[SEC. 3361.] Repealed by section 69, act of August 28, 1894. See p. 235.

SEC. 3362, as amended by section 14, act of March 1, 1879 (20 Stat., 327), and act of January 9, 1883 (22 Stat., 401), and section 3, act of June 13, 1898 (30 Stat., 449). All manufactured tobacco shall be put up and prepared by the manufacturer for sale, or removal for sale or consumption, in packages of the following description, and in no other manner:

Tobacco and
snuff, how put
up.

All snuff, in packages containing one-half, one, *one and two-thirds*, two and one-half, *three and one-third*, six, eight, and sixteen ounces, or in bladders and in jars containing not exceeding twenty pounds;

All fine-cut chewing-tobacco, and all other kinds of tobacco not otherwise provided for, in packages containing one, *one and two-thirds*, two and one-half, *three and one-third*, eight, and sixteen ounces, except that fine-cut chewing-tobacco may, at the option of the manufacturer, be put up in wooden packages containing ten, twenty, forty, and sixty pounds each;

All smoking-tobacco and all cut and granulated tobacco other than fine-cut chewing, all shorts, the refuse of fine cut chewing, which has passed through a riddle of thirty-six meshes to the square inch, and all refuse scraps, clippings, cuttings, and sweepings of tobacco, in packages containing one, *one and two-thirds*, two and one-half, *three and one-third*, eight, and sixteen ounces each;

All cavendish, plug, and twist tobacco, in wooden packages not exceeding two hundred pounds net weight.

Packages for
export.

And every such wooden package shall have printed or marked thereon the manufacturer's name and place of manufacture, the registered number of the manufactory, and the gross weight, the tare, and the net weight of the tobacco in each package: *Provided*, That these limitations and descriptions of packages shall not apply to tobacco and snuff transported in bond for exportation and actually exported: *And provided further*, That fine-cut shorts, the refuse of fine-cut chewing-tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, may be sold in bulk as material, and without the payment of tax, by one manufacturer directly to another manufacturer, or for export, *and perique tobacco may be sold by the manufacturer or producer thereof, in the form of carottes, directly to a legally-qualified manufacturer, to be cut or granulated and used as material in the manufacture of cigarettes or smoking-tobacco, without the payment of tax*, under such restrictions, rules, and regulations as the Commissioner of Internal Revenue may prescribe: *And provided further*, That wood, metal, paper, or other materials may be used separately or in combination for packing tobacco, snuff, and cigars, under such regulations as the Commissioner of Internal Revenue may establish.

Perique to-
bacco.

Act of Jan. 9,
1883.

Fine-cut chewing tobacco defined. (21 Int. Rev. Rec., 145; 31 *ibid.*, 245; 32 *ibid.*, 206.)

Leaf tobacco for consumption to be put up as fine-cut chewing. (40 Int. Rev. Rec., 277; 15 Op. Atty. Gen., 516; 23 Int. Rev. Rec., 55.)

Stemmed tobacco reimported. (43 Int. Rev. Rec., 375.)

Relative to manufacturers who purchase "perique" tobacco. Special permits will be granted, when. Producers of perique

can not transfer the same unstamped to other producers to be sold by them. (Vol. 1, Treas. Dec. (1898), No. 18943.)

Jumbo cigars.—A cigar-shaped bundle of tobacco of an extremely large size was classified as manufactured tobacco. It was in evidence that it was used as an ornament in cigar dealers' windows, but that it could be smoked as a cigar. *Held*, that the fact of its capability of being smoked does not altogether determine its character, and, if the principal utility of the article is for some other purpose, the article is to be classed as manufactured tobacco; if for the ordinary purposes of a cigar, as such. (*D'Estrinoz v. Gerker*, Collector, 1890, 43 Fed. Rep., 285.)

A qualified manufacturer of tobacco is not permitted to sell cut or granulated tobacco in bulk as material, and without payment of tax, to another manufacturer, although the latter may intend to properly pack and stamp it as required by the statute. All manufactured tobacco, whether cut, granulated, or scraps, the process of manufacture of which has been completed, is not subject to sale and transfer by one manufacturer to another, but must be properly packed, labeled, and stamped before removal from the place of manufacture. (Vol. 2, Treas. Dec. (1899), No. 21451.)

Manufacturers of tobacco or cigars may sell tobacco stems in their natural condition to other manufacturers, to qualified dealers in leaf tobacco, or to persons who buy tobacco stems in their natural condition exclusively for export, the purchaser of the stems not being required to qualify as a manufacturer of tobacco nor to export in bond the stems purchased from manufacturers. (Vol. 2, Treas. Dec. (1899), No. 21518.)

SEC. 3363, as amended by section 31, act of October 1, 1890 (26 Stat., 567). No manufactured tobacco shall be sold or offered for sale unless put up in packages and stamped as prescribed in this chapter, except at retail by retail dealers *from the packages authorized by section thirty-three hundred and sixty-two of the Revised Statutes*; and every person who sells or offers for sale any snuff or any kind of manufactured tobacco not so put up in packages and stamped shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

Tobacco and snuff to be sold only in prescribed packages; penalty; exception.

This amendment changes the words "from wooden packages stamped as provided in this chapter" in the original act to the words italicized above.

(United States v. Veazie, 6 Fed. Rep., 867; United States v. Jenkinson, 15 Fed. Rep., 903).

SEC. 3364, as amended by section 5, act of March 3, 1883 (22 Stat., 488). Every manufacturer of tobacco or snuff shall, in addition to all other requirements of this title relating to tobacco, print on each package, or securely affix, by pasting, on each package containing tobacco or snuff manufactured by or for him, a label, on which shall be printed * * * the number of the manufactory, the district and State in which it is situated, and these words:

Caution label.

NOTICE.—The manufacturer of this tobacco has complied with all requirements of law. Every person is cautioned, under the penalties of law, not to use this package for tobacco again.

Every manufacturer of tobacco who neglects to print on or affix such label to any package containing tobacco made by or for him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined fifty dollars for each package in respect to which such offense shall be committed.

Penalty.

Section 5 of the act of March 3, 1883, was a reenactment of section 3364, simply omitting the words "the proprietor's or manufacturer's name."

Manufacturers who comply with the regulations, series 7, No. 8, revised, may prepare and put up their snuff in glass tumblers or drinking glasses containing 3½ ounces or 6 ounces, respectively, the glasses to be provided with metal covers, each glass to have affixed thereon an internal-revenue stamp showing the quantity of snuff contained therein, the stamp to be properly canceled and so affixed as to securely seal the package; and to each such package must be affixed the caution-notice label required by section 3364, R. S., showing the number of manufactory, district, and State in which situated, and the caution notice in form prescribed by the statute. (Vol. 2, Treas. Dec. (1899), No. 21541.)

Manufacturers not permitted to print caution notice directly upon the package by use of a rubber stamp, such printed label not approved as a substitute for the caution notice required by regulations. (Vol. 1, Treas. Dec. (1898), No. 19085.)

SEC. 3365. (*Obsolete.*) *Relative to snuff and smoking tobacco manufactured before July 20, 1868.*

Purchasing tobacco not branded or stamped; penalty.

SEC. 3366. Every person who purchases, or receives for sale, any manufactured tobacco or snuff which has not been branded or stamped according to law, shall be liable to a penalty of fifty dollars for each offense.

Congress has as much power to say that the tax shall be paid in a particular way—that is, by stamps—as it has to impose any tax, and all its requirements must be complied with. (*United States v. Keyes*, 10 Fed. Rep., 876.)

Buying tobacco from a manufacturer who has not paid special tax.

SEC. 3367. Every person who purchases, or receives for sale, any manufactured tobacco or snuff from any manufacturer who has not paid the special tax, shall be liable for each offense to a penalty of one hundred dollars, and to a forfeiture of all the articles aforesaid so purchased or received, or of the full value thereof.

Tax on tobacco and snuff.

SEC. 3368, *as amended by section 30, act of October 1, 1890 (26 Stat., 619), and sec. 3, act of June 13, 1898 (30 Stat., 448).* Upon tobacco and snuff manufactured and sold, or removed for consumption or use, there shall be levied and collected the following taxes:

On snuff, manufactured of tobacco or any substitute for tobacco, ground, dry, damp, pickled, scented, or otherwise, of all descriptions, when prepared for use, a tax of *twelve* cents per pound. And snuff-flour, when sold, or removed for use or consumption, shall be taxed as snuff, and shall be put up in packages and stamped in the same manner as snuff.

On all chewing and smoking tobacco, fine-cut, cavendish, plug, or twist, cut or granulated, of every description; on tobacco twisted by hand or reduced into a condition to be consumed, or in any manner other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut shorts and refuse scraps, clippings, cuttings, and sweepings of tobacco, a tax of *twelve* cents per pound.

Tax 12 cents per pound on tobacco and snuff.

[SEC. 3368a.] *Section 3, act of June 13, 1898 (30 Stat., 448).* That there shall, in lieu of the tax now imposed by law, be levied

and collected a tax of twelve cents per pound upon all tobacco and snuff, however prepared, manufactured, and sold, or removed for consumption or sale; and upon cigars and cigarettes which shall be manufactured and sold, or removed for consumption or sale, there shall be levied and collected the following taxes, to be paid by the manufacturer thereof, namely, a tax of three dollars and sixty cents per thousand on cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, and of one dollar per thousand on cigars made of tobacco or any substitute therefor, weighing not more than three pounds per thousand; and a tax of three dollars and sixty cents per thousand on cigarettes made of tobacco or any substitute therefor, and weighing more than three pounds per thousand; and one dollar and fifty cents per thousand on cigarettes made of tobacco or any substitute therefor, and weighing not more than three pounds per thousand: Provided, That in lieu of the two, three, and four-ounce packages of tobacco and snuff now authorized by law, there may be packages thereof containing one and two-thirds ounces, two and one-half ounces, and three and one-third ounces, respectively, and in addition to packages now authorized by law, there may be packages containing one ounce of smoking tobacco.

Rate of tax on cigars.

Size of packages.

* * * * *

Additional paragraph of same section relating to an additional tax on tobacco, snuff, and cigars stamped after April 14 and removed from the factory or custom-house before June 14, 1898, is as follows:

And there shall also be assessed and collected, with the exceptions hereinafter in this section provided for, upon all the articles enumerated in this section which were manufactured, imported, and removed from factory or custom-house before the passage of this act bearing tax stamps affixed to such articles for the payment of the taxes thereon, and canceled subsequent to April 14, 1898, and which articles were at the time of the passage of this act held and intended for sale by any person, a tax equal to one-half the difference between the tax already paid on such articles at the time of removal from the factory or custom-house and the tax levied in this act upon such articles.

Every person having on the day succeeding the date of the passage of this act any of the above-described articles on hand for sale in excess of 1,000 pounds of manufactured tobacco and 20,000 cigars or cigarettes, and which have been removed from the factory where produced or the custom-house through which imported, bearing the rate of tax payable thereon at the time of such removal, shall make a full and true return under oath in duplicate of the quantity thereof in pounds as to the tobacco and snuff, and in thousands as to the cigars and cigarettes so held on that day, in such form and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Such returns shall be made and delivered to the collector or deputy collector for the proper internal-revenue district within thirty days after the passage of this act. One of said returns shall be retained by the collector and the other forwarded to the Commissioner of Internal Revenue, together with the assessment list for the month in which the return is received, and the Commissioner of Internal Revenue shall assess and collect the taxes found to be due as other taxes not paid by stamps are assessed and collected.

Date of acts imposing tax on tobacco and rates of tax.

Tobacco.	Rate of tax per pound.	Acts imposing tax.	Acts repealing tax.	Length of time rates were in force.
	<i>Cents.</i>			<i>Months.</i>
Smoking, made exclusively of stems..	2	July 1, 1862	Mar. 3, 1863	6
Smoking, made exclusively of stems..	5	Mar. 3, 1863	June 30, 1864	16
Smoking, prepared with all the stems in.....	5	July 1, 1862	June 30, 1864	22
Cavendish, plug, twist, fine-cut, valued at not over 30 cents per pound.....	10	July 1, 1862	Mar. 3, 1863	6
Cavendish, plug, twist, fine-cut, valued at over 30 cents per pound.....	15	July 1, 1862	Mar. 3, 1863	6
Cavendish, plug, twist, fine-cut, and manufactured tobacco of all descriptions, except smoking tobacco.....	15	Mar. 3, 1863	June 30, 1864	16
Snuff.....	20	July 1, 1862	June 30, 1864	22
Smoking, made exclusively of stems..	15	June 30, 1864	July 13, 1866	25
Smoking, prepared with all the stems in, and fine-cut shorts.....	25	June 30, 1864	Mar. 3, 1865	9
Cavendish, plug, twist, etc., and fine-cut chewing.....	35	June 30, 1864	Mar. 3, 1865	9
Snuff.....	35	June 30, 1864	Mar. 3, 1865	9
Twisted by hand.....	30	Mar. 3, 1865	July 13, 1866	16
Smoking, of all kinds, not otherwise provided for.....	35	Mar. 3, 1865	July 13, 1866	16
Cavendish, plug, twist, etc., and fine-cut chewing.....	40	Mar. 3, 1865	July 13, 1866	16
Snuff.....	40	Mar. 3, 1865	July 20, 1868	40
Smoking, not sweetened, stemmed, or butted.....	15	July 13, 1866	July 20, 1868	24
Twisted by hand, etc., and fine-cut shorts.....	30	July 13, 1866	July 20, 1868	24
Smoking, sweetened, stemmed, or butted.....	40	July 13, 1866	July 20, 1868	24
Chewing.....	40	July 13, 1866	July 20, 1868	24
Chewing, etc., smoking, etc., part of the stems removed.....	32	July 20, 1868	June 6, 1872	47
Smoking, exclusively of stems, etc.....	16	July 20, 1868	June 6, 1872	47
Snuff.....	32	July 20, 1868	Mar. 1, 1879	129
All kinds, except snuff, cigars, cheroots, and cigarettes.....	20	June 6, 1872	Mar. 3, 1875	32
All kinds, except snuff, cigars, cheroots, and cigarettes.....	24	Mar. 3, 1875	Mar. 1, 1879	50
All kinds, except cigars, cheroots, and cigarettes.....	16	Mar. 1, 1879	Mar. 3, 1883	48
All kinds, except cigars, cheroots, and cigarettes.....	8	Mar. 3, 1883	Oct. 1, 1890	91
Smoking and manufactured tobacco and snuff.....	6	Oct. 1, 1890	June 13, 1898	90
Manufactured tobacco and snuff.....	12	June 13, 1898	.....	.....

The acts relating to the tax on manufactured tobacco and snuff went into operation immediately on their passage, except the following: Act of March 3, 1865, took effect April 1, 1865; act of July 13, 1866, took effect August 1, 1866; act of June 6, 1872, took effect July 1, 1872; act of March 1, 1879, took effect May 1, 1879; act of March 3, 1883, took effect May 1, 1883. (Rep. Com. Int. Rev., 1888, p. 136.) Act of October 1, 1890, took effect January 1, 1891. Act of June 13, 1898, took effect June 14, 1898, so far as it related to taxes imposed on tobacco, snuff, cigars, and cigarettes.

The tax on manufactured tobacco and snuff first required to be paid by stamps. (Act of July 20, 1868.)

Stamps not of money value were required to be affixed by inspectors previous to that time. (Act of March 3, 1865.)

The term granulated tobacco not synonymous with snuff. (Venable v. Richards, 105 U. S., 636; 28 Int. Rev. Rec., 162; affirming 1 Hughes, 326; 22 Int. Rev. Rec., 299.)

Tobacco stamped and removed in forenoon of March 3, 1875, while the act of that date which increased the tax to 24 cents per pound was signed in the afternoon. The increase of tax did not apply in that case. (Burgess v. Salmon, 97 U. S., 381; 25 Int. Rev. Rec., 31; affirming 1 Hughes, 356; 21 Int. Rev. Rec., 333.)

Manufactured tobacco shipped in bond from the manufactory and stored in an export bonded warehouse on the 14th of June, 1872, was subject to the tax of 32 cents per pound prescribed by the internal revenue act of July 20, 1868. (Jones v. Blackwell, 100 U. S., 599; 26 Int. Rev. Rec., 114; 14 Op. Atty. Gen., 110; 16 Int. Rev. Rec., 77.)

SEC. 3369. The Commissioner of Internal Revenue shall cause to be prepared suitable and special stamps for the payment of the tax on tobacco and snuff, which shall indicate the weight and class of the article on which payment is to be made, and shall be affixed and canceled in the mode prescribed by the Commissioner of Internal Revenue, and stamps when used on any wooden package shall be canceled by sinking a portion of the same into the wood with a steel die, and also such export-stamps as are required by law. Such stamps shall be furnished to the collectors requiring them, and each collector shall keep at all times a supply equal in amount to three months' sale thereof, and shall sell the same only to the manufacturers of tobacco and snuff in their respective districts who have given bonds as required by law, and to owners or consignees of tobacco or snuff, upon the requisition of the proper custom-house officer having the custody of such tobacco or snuff; and to persons required by law to affix the same to tobacco or snuff on hand on the first day of January, eighteen hundred and sixty-nine. And every collector shall keep an account of the number, amount, and denominate values of stamps sold by him to each manufacturer or other person aforesaid:

Stamps, how prepared, furnished, and sold.

Record Form No. 47.

Provided, That such stamps as may be required to stamp tobacco, snuff, or cigars, sold under distraint by any collector of internal revenue, or for stamping any tobacco, snuff, or cigars which may have been abandoned, condemned, or forfeited, and sold by order of court or of any Government officer for the benefit of the United States, may, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other Government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered; and any revenue collector using or furnishing stamps in manner as aforesaid, on presenting vouchers satisfactory to the Commissioner of Internal Revenue, shall be allowed credit for the same in settling his stamp account with the Department:

Stamping forfeited tobacco, snuff, or cigars.

And provided further, That in case it shall appear that any abandoned, condemned, or forfeited tobacco, snuff, or cigars, when offered for sale, will not bring a price equal to the tax due and payable thereon, such goods shall not be sold for consumption in the United States; and upon application made to the Commissioner of Internal Revenue, he is authorized and directed to order the destruction of such tobacco, snuff, or cigars by the officer in whose custody and control the same may be at the time, and in such manner and under such regulations as the Commissioner of Internal Revenue may prescribe.

Destruction of unsalable tobacco and cigars.

As to power to establish, alter, or change stamps, etc., see sections 3445 and 3446 as amended, p. 339.

As to stamps on tobacco sold on distraint, etc., section 3458, p. 345.

Tobacco used as samples must be stamped. (23 Int. Rev. Rec., 29.)

As to the issue of duplicate stamps for restamping packages of tobacco from which the stamps have been lost or destroyed by accident. (See § 3315, R. S., p. 195.)

The term tax, as used in the last proviso of section 3369, is not intended to include import duties; and cigarettes, when forfeited, may be sold and delivered when they bring enough to pay the internal-revenue tax, although they may not bring enough to pay that and the customs duties. (*United States v. 59 Demijohns Agnadiante and Four Barrels of Cigarettes*. (1889.) 39 Fed. Rep., 401.) See Department Circular, No. 34, February 18, 1898. Vol. 1. Treas. Dec. (1898), No. 18984.

Tobacco manufactured by one person for another, or on shares; stamps by whom affixed; fraud in such cases.

SEC. 3370. Whenever tobacco or snuff of any description is manufactured, in whole or in part, upon commission or shares, or the material from which any such articles are made, or are to be made, is furnished by one person and made and manufactured by another, or the material is furnished or sold by one person with an understanding or agreement with another that the manufactured article is to be received in payment therefor or for any part thereof, the stamps required by law shall be affixed by the actual maker or manufacturer before the article passes from the place of making or manufacturing. And in case of fraud on the part of either of said persons in respect to said manufacture, or of any collusion on their part with intent to defraud the revenue, such material and manufactured articles shall be forfeited to the United States; and each party to such fraud or collusion shall be deemed guilty of a misdemeanor, and be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned for not less than six months nor more than three years.

Penalty.

SEC. 3371, as amended by section 14, act of March 1, 1879 (20 Stat., 327). Whenever any manufacturer of tobacco, snuff, or cigars, sells, or removes for sale or consumption, any tobacco, snuff, or cigars, upon which a tax is required to be paid by stamps, without the use of the proper stamps, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor, and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal: *Provided, however*, That no such assessment shall be made until and after notice to the manufacturer of the alleged sale and removal to show cause against said assessment; and the Commissioner of Internal Revenue shall, upon a full hearing of all the evidence, determine what assessment, if any, should be made.

Assessment of tax on tobacco, snuff, and cigars removed without stamps.

It is estimated that 25 pounds of leaf tobacco will make 1,000 cigars. (Circular Letter, No. 25, December 3, 1875, concerning assessments upon the accounts of cigar manufacturers. Regulations, Series 7, No. 8, Rev., p. 70.)

Authority of Commissioner under the provisions of sections 3371 and 3396 to examine returns of cigar manufacturers and to

treat deficiency in product based on the return of 1,000 cigars for every 25 pounds of tobacco as prima facie evidence of non-payment of taxes. (*United States v. Appel and Katencamp*, 22 Int. Rev. Rec., 169.)

SEC. 3372. Every manufacturer of tobacco or snuff who removes, otherwise than as provided by law, or sells, without the proper stamps denoting the tax thereon, or without having paid the special tax or given bond as required by law, any tobacco or snuff, or who makes false and fraudulent entries of manufactures or sales of tobacco or snuff, or makes false or fraudulent entries of the purchase or sales of leaf-tobacco, tobacco stems, or other material, or who affixes any false, forged, fraudulent, spurious, or counterfeit stamp, or imitation of any stamp, required by law, or any stamp required by law which has been previously used, to any box or package containing any tobacco or snuff, shall in addition to the penalties elsewhere provided by law for such offenses, forfeit to the United States all the raw material and manufactured or partly manufactured tobacco and snuff, and all machinery, tools, implements, apparatus, fixtures, boxes, and barrels, and all other materials which may be found in his possession, in his manufactory, or elsewhere.

Removing unlawfully, selling without stamps, or payment of tax, or giving bond, making false entries, etc.

Forfeiture.

SEC. 3373. The absence of the proper stamp on any package of manufactured tobacco or snuff shall be notice to all persons that the tax has not been paid thereon, and shall be prima-facie evidence of the non-payment thereof. And such tobacco or snuff shall be forfeited to the United States.

Absence of stamp to be evidence of nonpayment.

Forfeiture

United States v. Keyes (10 Fed. Rep., 876).

SEC. 3374. Every person who removes from any manufactory, or from any place where tobacco or snuff is made, any manufactured tobacco or snuff without the same being put up in proper packages, or without the proper stamp for the amount of tax thereon being affixed and canceled, as required by law; or, if the same be intended for export, without the proper export stamp being affixed; or who uses, sells, or offers for sale, or has in possession, except in the manufactory, or while in transfer under bond or a collector's permit, from any manufactory, store, or warehouse, to a vessel for exportation to a foreign country, any manufactured tobacco or snuff, without proper stamps for the amount of tax thereon being affixed and canceled; or who sells, or offers for sale, for consumption in the United States, or uses, or has in possession, except in the manufactory, or while in transfer under bond or a collector's permit, from any manufactory, store, or warehouse, to a vessel for exportation to a foreign country, any manufactured tobacco or snuff on which only the stamp marking the same for export has been affixed, shall for each such offense, respectively, be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years.

Removing, except in proper packages, or without stamp; selling unlawfully, etc.

Penalty.

SEC. 3375. Every person who affixes to any package containing tobacco or snuff any false, forged, fraudulent, spurious, or counterfeit stamp, or a stamp which has been before used, shall be deemed guilty of a felony, and shall be fined

Affixing false stamps or stamps before used.

Penalty.

not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than two years nor more than five years.

Stamps on emptied packages to be destroyed, buying, selling, or using same.

SEC. 3376. Whenever any stamped box, bag, vessel, wrapper, or envelope of any kind, containing tobacco or snuff, is emptied, the stamp or stamps thereon shall be destroyed by the person in whose hands the same may be. And every person who willfully neglects or refuses so to do shall, for each such offense, be fined fifty dollars, and imprisoned not less than ten days nor more than six months. And every person who sells or gives away, or who buys or accepts from another any such empty stamped box, bag, vessel, wrapper, or envelope of any kind, or the stamp or stamps taken from any such empty box, bag, vessel, wrapper, or envelope of any kind, shall, for each such offense, be fined one hundred dollars, and imprisoned for not less than twenty days and not more than one year. And every manufacturer or other person who puts tobacco or snuff into any such box, bag, vessel, wrapper, or envelope, the same having been either emptied or partially emptied, or who has in his possession, or affixes to any box or other package, any stamp which has been previously used, or who sells, or offers for sale, any box or other package of tobacco, snuff, or cigars, having affixed thereto any fraudulent, spurious, imitation, or counterfeit stamp, or stamp that has been previously used, or sells from any such fraudulently stamped box or package, or has in his possession any box or package as aforesaid, knowing the same to be fraudulently stamped, shall, for each such offense, be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than one year nor more than three years.

Penalty.

See section 3455, p. 344.

Imported tobacco and snuff.

SEC. 3377, *as amended by section 14, act of March 1, 1879 (20 Stat., 327)*. All manufactured tobacco and snuff (not including cigars) imported from foreign countries, shall, in addition to the import duties imposed on the same, pay the tax imposed by law on like kinds of tobacco and snuff manufactured in the United States, and have the same stamps respectively affixed. Such stamps shall be affixed and canceled on all such articles so imported by the owner or importer thereof, while they are in the custody of the proper custom-house officers, and such articles shall not pass out of the custody of said officers until the stamps have been affixed and canceled. Such tobacco and snuff shall be put up in packages, as prescribed by law for like articles manufactured in the United States before the stamps are affixed; and the owner or importer shall be liable to all the penal provisions prescribed for manufactures of tobacco and snuff manufactured in the United States. Whenever it is necessary to take any such articles, so imported, to any place for the purpose of repacking, affixing, and canceling such stamps, other than the public stores of the United States, the collector of customs of the port where they are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officers as he may direct. And every officer of customs who permits any such articles to pass out

of his custody or control without compliance by the owner or importer thereof with the provisions of this section relating thereto, shall be deemed guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years: *Provided, That scraps, cuttings, and clippings of tobacco imported from any foreign country may, after the proper customs duty has been paid thereon, be withdrawn in bulk without the payment of the internal-revenue tax, and transferred as material directly to the factory of a manufacturer of tobacco or snuff, or of a cigar manufacturer, under such restrictions and regulations as shall be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.*

Imported scraps, cuttings, and clippings of tobacco.

Repacking in legal packages imported tobacco and snuff. (36 Int. Rev. Rec., 230.)

SEC. 3378. * * * All manufactured tobacco of every description shall be taken and deemed as having been manufactured after July twentieth, eighteen hundred and sixty-eight.

All tobacco deemed to have been manufactured after July 20, 1868.

SEC. 3379. (Obsolete.) *Relates to tobacco, snuff, and cigars manufactured between July 20, 1868, and November 28, 1883.*

SEC. 3380. Any person who sells or offers for sale any manufactured tobacco or snuff, representing the same to have been manufactured and the tax paid thereon prior to July twenty, eighteen hundred and sixty-eight, when the same was not so manufactured, and the tax not so paid, shall be liable to a penalty of five hundred dollars for each offense, and shall be deemed guilty of a misdemeanor, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years.

Selling tobacco falsely represented to be made and tax paid before July 20, 1868; penalty.

SEC. 3381, as amended by section 28, act of October 1, 1890. (26 Stat., 618.) Every peddler of tobacco, before commencing, or, if he has already commenced, before continuing to peddle tobacco, shall furnish to the collector of his district a statement accurately setting forth the place of his residence, and, if in a city, the street and number of the street where he resides, the State or States through which he proposes to travel; also whether he proposes to sell his own manufactures or the manufactures of others, and, if he sells for other parties, the person for whom he sells. He shall also give a bond in the sum of five hundred dollars, to be approved by the collector of the district, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on tobacco, snuff, or cigars; that he shall neither sell nor offer for sale any tobacco, snuff, or cigars, except in original and full packages, as the law requires the same to be put up and prepared by the manufacturer for sale, or for removal for sale or consumption, and except such packages of tobacco, snuff, and cigars as bear the manufacturer's label or caution notice, and his legal marks and brands, and genuine internal-revenue stamps which have never before been used.

Peddlers of tobacco.

Amending section 3381.

Statement and bond.

For definition of peddlers of tobacco, see p. 129.

Special tax on peddlers of tobacco repealed, see p. 129.

Peddlers of tobacco traveling with wagon.

SEC. 3382. Every peddler of tobacco, snuff, or cigars, traveling with a wagon, shall affix and keep on the same, in a conspicuous place, a sign painted in oil-colors, or gilded, giving his full name, business, and collection district.

Peddler to obtain and exhibit certificate, etc.

SEC. 3383, *as amended by section 29, act of October 1, 1890.* (26 Stat., 618.) Every peddler of tobacco shall obtain a certificate

Amending section 3383.

from the collector of his collection district, who is hereby authorized and directed to issue the same, giving the name of the peddler, his residence, and the fact of his having filed the required bond; and shall on demand of any officer of internal revenue produce and exhibit his certificate. And whenever any peddler refuses to exhibit his certificate, as aforesaid, on demand of any officer of internal revenue, said officer may seize the horse or mule, wagon, and contents, or pack, bundle, or basket, of any person so refusing; and the collector of the district in which the seizure occurs may, on ten days' notice, published in any newspaper in the district, or served personally on the peddler, or at his dwelling house, require such peddler to show cause, if any he has, why the horses or mules, wagons, and contents, pack, bundle, or basket so seized shall not be forfeited. In case no sufficient cause is shown, proceedings for the forfeiture of the property seized shall be taken under the general provisions of the internal-revenue laws relating to forfeitures. Any internal-revenue agent may demand production of and inspect the collector's certificate for peddlers, and refusal or failure to produce the same, when so demanded, shall subject the party guilty thereof to a fine of not more than five hundred dollars and to imprisonment for not more than twelve months.

Forfeiture.

Penalty.

Peddling tobacco unlawfully; penalty.

SEC. 3384, *as amended by section 15, act of March 1, 1879.* (20 Stat., 346.) Every person who is found peddling tobacco, snuff, or cigars, without having given the bond, or without having previously obtained the collector's certificate as herein provided, or who sells tobacco, snuff, or cigars otherwise than in original and full packages as put up by the manufacturer; or who has in his possession any internal-revenue stamp which has been removed from any box or other package of tobacco, snuff, or cigars, or any empty or partially emptied box or other package which has been used for tobacco, snuff, or cigars, the stamp or stamps on which have not been destroyed; or who fails to have affixed to his wagon, in a conspicuous place, a sign, painted in oil colors, or gilded, giving his full name, business, and collection district, shall, for each such offense, be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned not less than six months nor more than one year, or both, at the discretion of the court. *And any collector or deputy collector finding such peddler in the act of offending as to either of the offenses mentioned in this section, may seize the horse or horses, mule or mules, wagon and contents, or pack, bundle, or basket, of any such person; and the collector shall thereupon proceed upon such seizure as provided in section thirty-three hundred and eighty-three.*

SEC. 3385, as amended by act of June 9, 1880 (21 Stat., 167), amended and re-enacted by act of August 8, 1882 (22 Stat., 372), and amended by act of January 13, 1883 (22 Stat., 402). Manufactured tobacco, snuff, and cigars intended for immediate exportation may, after being properly inspected, marked, and branded, be removed from the manufactory in bond without having affixed thereto the stamps indicating the payment of the tax thereon. The removal of such tobacco, snuff, and cigars from the manufactory shall be made under such regulations, and after making such entries, and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. There shall be affixed to each package of tobacco, snuff, and cigars intended for immediate export, before it is removed from the manufactory, an engraved stamp indicative of such intention. Such stamp shall be provided and furnished to the several collectors as in the case of other stamps, and they shall account for the use of the same. When the manufacturer has made the proper entries, filed the bonds, and otherwise complied with the requirements of law and the regulations as herein provided, the collector shall issue to him a permit for the removal, accurately describing the tobacco, snuff, and cigars, to be shipped, the number and kinds of packages, the number of pounds, the marks and brands, the State and collection district from which the same are shipped, the number of the manufactory and the manufacturer's name, the port from which the said tobacco, snuff, and cigars are to be exported, and the route or routes over which the same are to be sent to the port of shipment. Upon the presentation to the collector of internal revenue of a detailed report from the inspectors of customs, and a certificate of the collector of customs at the port from which the goods are to be exported that the goods removed from the manufactory under bond and described in the permit of the collector of internal revenue have been received by the said collector of customs, and that the said goods were duly laden on board of a foreign-bound vessel, naming the vessel, and that the said merchandise was entered on the outward manifest of said vessel, and that the said vessel and cargo were duly cleared from said port, and on the payment of the tax or deficiency, if any, the bonds, which have been given or shall hereafter be required to be given under the provisions of this section shall be canceled. *But when the goods are exported to an adjacent foreign territory, by vessel or otherwise, said bonds shall be canceled upon such proofs of exportation as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.*

Exportation of
manufactured to-
bacco, etc.

Export stamps.

Cancellation of
bonds.
Act of Jan. 13,
1883.

Every person who, with the intent to defraud the revenue laws of the United States, relands or causes to be relanded within the jurisdiction of the United States any manufactured tobacco, snuff, or cigars which have been shipped for exportation under the provisions of this act, without properly entering such tobacco, snuff, or cigars at the custom-

Penalty for re-
landing tobacco
shipped for ex-
port.

house, and paying the proper customs and internal revenue tax thereon, or who receives such relanded tobacco, snuff, or cigars, and every person who aids or abets in such relanding or receiving such tobacco, snuff or cigars, shall, on conviction, be fined not exceeding five thousand dollars, or imprisoned not more than three years, and all tobacco, snuff, or cigars so relanded shall be forfeited to the United States.

The only substantial change from the amended section made by the act of August 8, 1882, was striking out the following words relating to the export stamp: "And for the expense attending the providing and affixing thereof ten cents for each package so stamped shall be paid to the collector on making the entry for such transportation."

The exportation stamp required to be affixed to packages of tobacco intended for exportation declared constitutional. (*Pace v. Burgess*, 82 U. S., 372; 22 Int. Rev. Rec., 145.) Decision affirmed. (*Turpin v. Burgess*, 117 U. S., 504; 32 Int. Rev. Rec., 119.)

Persons proposing to manufacture tobacco and cigars exclusively for export required to qualify both as manufacturers of tobacco and as cigar manufacturers. Tobacco, cigars, and cigarettes manufactured exclusively for export may be packed in such quantity and in such kind of packages as desired. (Vol. 1, *Treas Dec.* (1898), No. 19124.)

[See on this section *United States v. Alien*, 39 Fed. Rep., 100; *Ryan v. United States*, 19 Wall., 514.]

[SEC. 3385a.] *Section 24, act of February 8, 1875 (18 Stat., 307).*

On withdrawal
of tobacco for ex-
portation, trans-
portation bond
may be taken.

That whenever any manufacturer of tobacco shall desire to withdraw the same from his factory for exportation under existing laws, such manufacturer may, at his option, in lieu of executing an export bond, as now provided by law, give a transportation bond, with sureties satisfactory to the collector of internal revenue, and under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, conditioned for the due delivery thereof on board ship at a port of exportation to be named therein; and in such case, on arrival of the tobacco at the port of export, the exporter or owner at that port shall immediately notify the collector of the port of the fact, setting forth his intention to export the same, the name of the vessel upon which the same is to be laden, and the port to which it is intended to be exported. He shall, after the quantity and description of tobacco have been verified by the inspector, file with the collector of the port an export entry verified by affidavit. He shall also give bond to the United States, with at least two sureties, satisfactory to the collector of customs, conditioned that the principal named in said bond will export the tobacco as specified in said entry, to the port designated in said entry, or to some other port without the jurisdiction of the United States. And upon the lading of such tobacco, the collector of the port, after proper bonds for the exportation of the same have been completed by the exporter or owner at the port of shipment thereof, shall transmit to the collector of internal revenue of the district from which the said tobacco was withdrawn for exportation, a clearance certificate and a detailed report of the inspector; which report shall show the quantity and description of manufactured tobacco, and the marks thereof. Upon the receipt of the certificate and

Notice to col-
lector of port.

Export entry.

Export bond.

Clearance cer-
tificate and in-
spector's report.

report, and upon payment of tax on deficiency, if any, the collector of internal revenue shall cancel the transportation bond.

Cancellation of transportation bond.

Cancellation of export bond.

The bonds required to be given for the landing at a foreign port of such manufactured tobacco shall be canceled upon the presentation of satisfactory proof and certificates that said tobacco has been landed at the port of destination named in the bill of lading, or any other port without the jurisdiction of the United States, or upon satisfactory proof that after shipment the same was lost at sea without fault or neglect of the owner or exporter thereof.

As bonds given under section 3385, as amended, are canceled on proof of clearance of the articles therein named for a foreign country, exporters do not now avail themselves of the provisions of this section.

[SEC. 3385b.] *Section 1, act of August 4, 1886 (24 Stat., 218).* That manufactured tobacco, snuff, and cigars may be removed for export to a foreign country without payment of tax, under such regulations, and the making of such entries, and the filing of such bonds and bills of lading as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

Regulations authorized.

Section 15 of the act of July 24, 1897, relative to the manufacture of articles from materials subject to internal-revenue tax in bonded warehouses under Treasury Regulations for exportation without tax being paid. p. 297.

[The Secretary of the Treasury has issued regulations relating to the establishment of bonded manufacturing warehouses, under the provisions of section 9 of the tariff act of August 28, 1894, and section 15 of the act of July 24, 1897. See circulars, Division of Customs, dated November 14, 1894 (Treas. Dec. No. 15442); August 19, 1897 (Treas. Dec. No. 18278); September 24, 1897 (Treas. Dec. No. 18379), and January 26, 1898 (Treas. Dec. No. 18868).]

Section 16 of the act of June 26, 1884 (commonly called the shipping act), as amended by section 14 of the act of July 24, 1897 (30 Stat., 151), provides:

"That all articles of foreign or domestic production needed and actually withdrawn from bonded warehouses and bonded manufacturing warehouses for supplies (not including equipment) of vessels of the United States engaged in foreign trade, or in trade between the Atlantic and Pacific ports of the United States, may be so withdrawn from said bonded warehouses, free of duty or of internal-revenue tax, as the case may be, under such regulations as the Secretary of the Treasury may prescribe; but no such article shall be landed at any port of the United States.

Regulations in pursuance of the above provisions September 24, 1897, Department circular No. 155. (Treas. Dec. No. 18379.)

[SEC. 3385c.] *Section 2, paragraph 483, act of July 24, 1897 (30 Stat., 194).* * * * And provided further, That when manufactured tobacco which has been exported without payment of internal-revenue tax shall be re-imported it shall be retained in the custody of the collector of customs until internal-revenue stamps in payment of the legal duties shall be placed thereon.

Re-imported tobacco to be retained at custom-house until tax is paid and stamps affixed.

(See Department Circular No. 98, October 20, 1890. 36 Int. Rev. Rec., 333.)

SEC. 3386, as amended by section 16, act of March 1, 1879 (20 Stat., 327). There shall be an allowance of drawback on tobacco, snuff, and cigars on which the tax has been paid by suitable stamps affixed thereto before removal from the place

Drawback on exported tobacco, snuff, and cigars.

of manufacture, when the same are exported, equal in amount to the value of the stamps found to have been so affixed; the evidence that the stamps were so affixed, and the amount of tax so paid, and of the subsequent exportation of the said tobacco, snuff, and cigars, to be ascertained under such regulations as shall be prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury. Any sums found to be due under the provisions of this section shall be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States, out of any money arising from internal duties not otherwise appropriated:

Certificate and
bond to be filed.

Provided, That no claim for an allowance of drawback shall be entertained or allowed until a certificate from the collector of customs at the port from which the goods have been exported, or other evidence satisfactory to the Commissioner of Internal Revenue, has been furnished, that the stamps affixed to the tobacco, snuff, or cigars entered and cleared for export to a foreign country were totally destroyed before such clearance; nor until the claimant has filed a bond, with good and sufficient sureties, to be approved by the collector of the district from which the goods are shipped, in a penal sum double the amount of the tax for which said claim is made, that he will procure, within a reasonable time, evidence satisfactory to the Commissioner of Internal Revenue that said tobacco, snuff, or cigars have been landed at any port without the jurisdiction of the United States, or that after shipment the same were lost at sea, and have not been relanded within the limits of the United States.

Regulations in regard to drawback on tobacco, snuff, and cigars. (Series 7, No. 8, revised.)

Fraudulently
claiming draw-
back on manu-
factured tobacco.

[SEC. 3386a.] *Section 25, act of February 8, 1875 (18 Stat., 307).* That if any person or persons shall fraudulently claim or seek to obtain an allowance or drawback of duties on any manufactured tobacco, or shall fraudulently claim any greater allowance or drawback thereon than the duty actually paid, such person or persons shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of five hundred dollars, at the election of the Secretary of the Treasury, to be recovered as in other cases of forfeiture provided for in the internal revenue laws.

Punishment.

See also penalty provided by section 3443, p. 338.

CHAPTER SEVEN.

CIGARS.

Sec.	Sec.
3387 (amended). Manufacturer's statement, bond, and certificate; cigarettes and cheroots held to be cigars; penalty.	ing; using false stamps, etc.; cigars packed for export; penalty.
3388. Manufacturer's sign.	3398. Absence of stamp cause of forfeiture.
3389 (amended). Record of manufacturer.	3399. Cigars manufactured on shares, commission, or contract, how stamped; fraud, penalty.
3390. Annual inventory, book entries, and monthly abstracts of manufacturer; penalty.	3400. Forfeiture of property for selling etc., contrary to law, using false stamps, etc.
3391. Dealers in materials for cigars to make sworn statement; examination of books.	3401. Falsely representing cigars to have been made prior to July 20, 1868; penalty.
3392 (amended). How cigars and cigarettes to be put up and stamped; penalty.	3402. Imported cigars to pay tax.
3393 (amended). Label; penalty.	3403. Cigars on hand after April 1, 1869. Selling imported cigars not packed and stamped as required by law; penalty.
3394 (amended). Tax on cigars and cigarettes. When tobacco classed as cigars and as cigarettes Commissioner to provide stamps, regulations, and restrictions.	3404. Purchasing cigars not branded or stamped; penalty.
3395. Stamps, how prepared, furnished, etc.	3405. Buying cigars from a manufacturer who has not paid a special tax; penalty.
3396. Commissioner to prescribe regulations.	3406. Stamps on emptied cigar boxes to be destroyed; penalty. Destruction of emptied stamped cigar boxes; penalty.
3397 (amended). Removal without properly boxing, stamping, or brand-	

SEC. 3387, as amended by section 35, act of October 1, 1890 (26 Stat., 620). Every person before commencing, or, if he has already commenced, before continuing, the manufacture of cigars, shall furnish, without previous demand therefor, to the collector of the district a statement in duplicate, under oath, setting forth the place, and, if in a city, the street and number of the street, where the manufacture is to be carried on; and when the same are to be manufactured for, or to be sold and delivered to, any other person, the name and residence and business or occupation of the person for whom they are to be manufactured, or to whom they are to be delivered; and shall give a bond, in conformity with the provisions of this Title, in such penal sum as the collector may require, not less than [one] hundred dollars, and the sum of said bond may be increased from time to time and additional sureties required, at the discretion of the collector, or under the instructions of the Commissioner of Internal Revenue. Said bond shall be conditioned that * * * he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on his manufactures; that he shall render correctly all the returns, statements, and inventories prescribed; that whenever he shall add to

Manufacturer's statement and bond.

Form No. 38½.

Form 7

the number of cigar-makers employed by him he shall immediately give notice thereof to the collector of the district; that he shall stamp, in accordance with law, all cigars manufactured by him before he offers the same or any part thereof for sale, and before he removes any part thereof from the place of manufacture; that he shall not knowingly sell, purchase, expose, or receive for sale, any cigars which have not been stamped as required by law; and that he shall comply with all the requirements of law relating to the manufacture of cigars. Every cigar-manufacturer shall obtain from the collector of the district, who is hereby required to issue the same, a certificate setting forth the number of cigar-makers for which the bond has been given, and shall keep the same posted in a conspicuous place within the manufactory; and every cigar-manufacturer who neglects or refuses to obtain such certificate, or to keep the same posted as hereinbefore provided, shall be fined one hundred dollars.

Certificate.
Form No. 41½.

Penalty.

And every person who manufactures cigars of any description, without first giving bond as herein required, shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than three months nor more than five years.

Cigarettes and
cheroots held to
be cigars.

Cigarettes and cheroots shall be held to be cigars under the meaning of this chapter.

The amendment made to this section by the act of March 1, 1879, struck out after the words "conditioned that" in the second sentence the words "he shall not employ any person to manufacture cigars who has not been duly registered as a cigar maker."

Definition of manufacturer of cigars, see p. 129.

Special taxes of manufacturers of cigars, p. 141.

On this section see 16 Op. Atty. Gen., 89; 24 Int. Rev. Rec., 227.

The same premises or room can not be used for carrying on the business of a cigar manufacturer and a dealer in cigars. (*Crisp v. Proud*, 4 Hughes, 57; 24 Int. Rev. Rec., 340.)

A manufacturer of cigars in his statement set forth that the room adjoining the store in the rear on the first floor of certain premises as the place where his manufacture was to be carried on. Circular No. 181 required that a cigar factory should be at least an entire room, "separated by wall and partition from all other parts of the building," and that the factory should not any part of it be used, even though marked off or separated from the remainder by a railing, counter, bench, screen, or curtain, as a store where the manufacturer can sell his cigars otherwise than in legal boxes properly branded, labeled, and stamped. The court held that the requirements of the circular were within the power of the Commissioner to prescribe under section 3396. (*Ludloff et al. v. United States*, 108 U. S., 176; 29 Int. Rev. Rec., 125.)

There must be a line of demarcation between the place of sale and the place of manufacture of cigars, even where the whole business is carried on in one room, and cigars can not be removed from the latter to the former until packed in boxes, stamped, labeled, and branded as required by law. (*United States v. Julius Neid*, 13 Int. Rev. Rec., 28.)

Manufacturer's
sign.

SEC. 3388. Every cigar-manufacturer shall place and keep on the side or end of the building within which his business is carried on, so that it can be distinctly seen, a sign, with letters thereon not less than three inches in length, painted in oil-colors or gilded, giving his full name and business. Any person neglecting to comply with the requirements of

this section shall on conviction, be fined not less than one hundred dollars nor more than five hundred dollars.

SEC. 3389, *as amended by section 34, act of October 1, 1890 (26 Stat., 620)*. Every collector shall keep a record, in a book provided for that purpose, to be open to the inspection of *only the proper officers of internal-revenue, including deputy collectors and internal-revenue agents*, of the name and residence of every person engaged in the manufacture of cigars in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer an abstract of his inventory and monthly returns; and he shall cause the several manufacturers of cigars in the district to be numbered consecutively, which number shall not thereafter be changed.

Record of manufacturers of cigars to be kept by collector.
Form No. 11.

SEC. 3390. Every person now or hereafter engaged in the manufacture of cigars shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner of Internal Revenue, of the quantity of leaf tobacco, cigars, stems, scraps, clippings, and waste, and of the number of cigar-boxes and the capacity of each box, held or owned by him on the first day of January of each year, or at the time of commencing and at the time of concluding business, if before or after the first of January; setting forth what portion and kinds of said goods were manufactured or produced by him, and what were purchased from others, and shall verify said inventory by his oath indorsed thereon. The collector shall make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory; and shall verify the fact of such examination by oath to be indorsed on the inventory. Every such person shall also enter daily in a book, the form of which shall be prescribed by the Commissioner of Internal Revenue, an accurate account of all the articles aforesaid purchased by him, the quantity of leaf tobacco, cigars, stems, or cigar-boxes, of whatever description, manufactured, sold, consumed, or removed for consumption or sale, or removed from the place of manufacture; and shall, on or before the tenth day of each and every month, furnish to the collector of the district a true and accurate abstract from such book, verified by his oath, of all such purchases, sales, and removals made during the month next preceding. In case of refusal or willful neglect to deliver the inventory or keep the account, or furnish the abstract aforesaid, he shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

Annual inventory, book entries, and monthly abstracts of manufacturer.
Form No. 70b.

Verification of inventory.

Form No. 73.

Form No. 72.

Penalty.

All tobacco to be accounted for in the condition in which it is purchased—tobacco stemmed in the factory to be reduced by the collector to unstemmed. (Vol. 1, Treas. Dec. (1898), No. 18995.)

Cigar leaf tobacco in the custody of the customs service is not subject to entry on Book 73, and monthly return, Form 72, kept by cigar manufacturers, who must only enter on these records leaf tobacco actually received at the factory. Imported leaf tobacco, not actually received by the manufacturer at his

cigar factory, improperly entered on record Book 73, and monthly return, Form 72, must be stricken from these records and eliminated from the accounts. (Vol. 2, Treas. Dec. (1899), No. 21449.)

Circular letter to collectors as to annual abstracts. (43 Int. Rev. Rec., 453.)

Dealers in material for cigars to make sworn statement, when demanded.

SEC. 3391. It shall be the duty of every dealer in leaf-tobacco or material used in manufacturing cigars, on demand of any officer of internal revenue, to render to such officer a true and correct statement, under oath, of the quantity and amount of such leaf-tobacco or materials sold or delivered to any person named in such demand; and in case of refusal or neglect to render such statement, or if there is cause to believe such statement to be incorrect or fraudulent, the collector shall make an examination of persons, books, and papers in the manner provided in this Title in relation to frauds and evasions.

Examination of books.

See sections 3163a, p. 73; 3173, p. 80, and 3176, p. 83.

How cigars are to be packed.

SEC. 3392, as amended by section 32, act of October 1, 1890 (26 Stat., 619). All cigars shall be packed in boxes not before used for that purpose, containing respectively twenty-five, fifty, one hundred, two hundred, two hundred and fifty, or five hundred cigars each: *Provided, however, That manufacturers of cigars shall be permitted to pack in boxes not before used for that purpose cigars not to exceed thirteen nor less than twelve in number, to be used as sample boxes; and every person who sells, or offers for sale, or delivers, or offers to deliver, any cigars in any other form than in new boxes as above described, or who packs in any box any cigars in excess of or less than the number provided by law to be put in each box respectively, or who falsely brands any box, or affixes a stamp on any box denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars, and be imprisoned not more than two years: Provided, That nothing in this section shall be construed as preventing the sale of cigars at retail by retail dealers who have paid the special tax as such from boxes packed, stamped, and branded in the manner prescribed by law: And provided further, That every manufacturer of cigarettes shall put up all the cigarettes that he manufactures or has manufactured for him and sells or removes for consumption or use, in packages or parcels containing ten, twenty, fifty, or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the tax thereon, and shall properly cancel the same prior to such sale or removal for consumption or use, under such regulations as the Commissioner of Internal Revenue shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in like manner, in addition to the import stamp indicating inspection of the custom-house before they are withdrawn therefrom.*

Amending section 3392.

Penalty.

How cigarettes are to be put up and stamped.

Imported cigarettes.

Relative to packing, marking, and labeling cigarettes and small cigars weighing not more than 3 pounds per 1,000. (Cigar Manufacturers' Tax Manual, Special No. 85, p. 22.)

Wood, metal, paper, or other materials may be used separately or in combination for packing cigars under such regulations as the Commissioner of Internal Revenue may establish. (§ 3362 amended, p. 240.)

A cigar-vending machine so constructed that the cigars can be delivered directly to the purchaser from original stamped packages, and such packages can be officially inspected without unlocking the machine, approved. (Vol. 1, Treas. Dec. (1898), No. 18944.)

SEC. 3393, as amended by section 16, act of March 1, 1879 (20 Stat., 327). Every manufacturer of cigars shall securely affix, by pasting on each box containing cigars manufactured by or for him, a label, on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words:

Label and notice on cigars.

NOTICE.—The manufacturer of the cigars herein contained has complied with all the requirements of law. Every person is cautioned not to use either this box for cigars again, or the stamp thereon again, nor to remove the contents of this box without destroying said stamp, under the penalties provided by law in such cases.

Every manufacturer of cigars who neglects to affix such label to any box containing cigars made by or for him, or sold or offered for sale by or for him, and every person who removes any such label, so affixed, from any such box, shall be fined fifty dollars for each box in respect to which such offense is committed.

Penalty.

Cigars exported exempted from the provisions of this section. (See § 3397, p. 262.)

The name of a person other than the manufacturer can not appear on the caution-notice label unless associated with the manufacturer's name. The manufacturer may print or affix the name of the dealer upon cigar boxes when such printed matter does not indicate that such dealer made the cigars. (Vol. 1, Treas. Dec. (1898), No. 19088.)

SEC. 3394, as amended by section 2, act of March 3, 1875 (18 Stat., 339); section 4, act of March 3, 1883 (22 Stat., 488); section 10, act of July 24, 1897, (30 Stat., 206); and section 3, act of June 13, 1898 (30 Stat., 449). Upon cigars and *cigarettes* which shall be manufactured and sold, or removed for consumption or sale, there shall be levied and collected the following taxes, to be paid by the manufacturer thereof, namely, a tax of *three dollars and sixty cents* per thousand on cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, and of one dollar per thousand on cigars made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand; and a tax of *three dollars and sixty cents* per thousand on cigarettes, made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand; and *one dollar and fifty cents* per thousand on cigarettes, made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand:

Tax to be paid by manufacturer.

Rate of tax.

Provided, That all rolls of tobacco, or any substitute therefor, wrapped with tobacco, shall be classed as cigars, and all rolls of tobacco, or any substitute therefor, wrapped in paper or any substance other than tobacco, shall be classed as cigarettes.

Tobacco when classed as cigarettes.

And the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall provide stamps.

Commissioner to provide stamps.

dies and adhesive stamps for cigars weighing not more than three pounds per thousand:

Provided, That such stamps shall be in the denominations of ten, twenty, fifty, and one hundred, and the laws and regulations governing the packing and removal for sale of cigarettes, and the affixing and canceling of the stamps on the packages thereof, shall apply to cigars weighing not more than three pounds per thousand.

Restrictions. None of the packages of smoking tobacco and fine-cut chewing tobacco and cigarettes prescribed by law shall be permitted to have packed in, or attached to, or connected with, them any article or thing whatsoever, other than the manufacturers' wrappers and labels, the internal revenue stamp and the tobacco or cigarettes, respectively, put up therein, on which tax is required to be paid under the internal revenue laws; nor shall there be affixed to, or branded, stamped, marked, written, or printed upon, said packages, or their contents, any promise or offer of, or any order or certificates for, any gift, prize, premium, payment, or reward.

Date of acts imposing tax on cigars and cigarettes and rates of tax.

	Rates of tax.	Acts imposing tax.	Acts repealing tax.	Length of time rates were in force.
	<i>Per M.</i>			<i>Months.</i>
Cigare valued at not over \$5 per M.	\$1.50	July 1, 1862	June 30, 1864	22
Valued at over \$5 and not over \$10 per M.	2.00	July 1, 1862	June 30, 1864	22
Valued at over \$10 and not over \$20 per M.	2.50	July 1, 1862	June 30, 1864	22
Valued at over \$20 per M.	3.50	July 1, 1862	June 30, 1864	22
Cheroots valued at not over \$5 per M.	3.00	June 30, 1864	Mar. 3, 1865	9
Cigare valued at not over \$5 per M.	3.00	June 30, 1864	Mar. 3, 1865	0
Valued at over \$5 and not over \$15 per M.	8.00	June 30, 1864	Mar. 3, 1865	0
Valued at over \$15 and not over \$30 per M.	15.00	June 30, 1864	Mar. 3, 1865	0
Valued at over \$30 and not over \$45 per M.	25.00	June 30, 1864	Mar. 3, 1865	9
Valued at over \$45 per M.	40.00	June 30, 1864	Mar. 3, 1865	9
Cigarettes valued at not over \$6 per 100 packages of 25 each.	a 1.00	June 30, 1864	Mar. 3, 1865	9
Valued at over \$6 per 100 packages of 25 each.	a 3.00	June 30, 1864	Mar. 3, 1865	9
Cigarettes made wholly of tobacco.	3.00	June 30, 1864	Mar. 3, 1865	9
Cigars and cheroots made wholly of tobacco or of any substitutes therefor.	10.00	Mar. 3, 1865	July 13, 1866	16
Cigarettes valued at not over \$5 per 100 packages of 25 each.	b. 05	Mar. 3, 1865	July 13, 1866	16
Valued at over \$5 per 100 packages of 25 each.	c. 05	Mar. 3, 1865	July 13, 1866	16
Cigarettes made wholly of tobacco or of any substitutes therefor.	10.00	Mar. 3, 1865	July 13, 1866	16
Cigars, cigarettes, and cheroots valued at \$8 per M. or less.	2.00	July 13, 1866	Mar. 2, 1867	7
Valued at over \$8 and not over \$12 per M.	4.00	July 13, 1866	Mar. 2, 1867	7
Valued at over \$12 per M.	d 4.00	July 13, 1866	Mar. 2, 1867	7
Cigare, cigarettes, and cheroots of all descriptions.	5.00	Mar. 2, 1867	July 20, 1868	17
Cigare and cheroots of all descriptions.	5.00	July 20, 1868	Mar. 3, 1875	79
Cigarettes weighing not over 3 pounds per M.	1.50	July 20, 1868	Mar. 3, 1875	79
Weighing over 3 pounds per M.	5.00	July 20, 1868	Mar. 3, 1875	79
Cigare and cheroots of all descriptions.	6.00	Mar. 3, 1875	Mar. 3, 1883	98
Cigarettes weighing not over 3 pounds per M.	1.75	Mar. 3, 1875	Mar. 3, 1883	98
Weighing over 3 pounds per M.	6.00	Mar. 3, 1875	Mar. 3, 1883	98

a Per 100 packages.

b Per package.

c Per cent.

d And 20 per cent.

Date of acts imposing tax on cigars and cigarettes and rates of tax—C't'd.

	Rates of tax.	Acts impos- ing tax.	Acts repeal- ing tax.	Length of time rates were in force.
	<i>Per M.</i>			<i>Months.</i>
Cigare and cheroots of all descriptions.	\$3.00	Mar. 3, 1883	June 13, 1898	183
Cigarettes weighing not over 3 pounds per M.	.50	Mar. 3, 1883	July 24, 1897	172
Weighing over 3 pounds per M.	3.00	Mar. 3, 1883	June 13, 1898	183
Cigars weighing more than 3 pounds per M.	3.00	July 24, 1897	June 13, 1898	10
Weighing not more than 3 pounds per M.	1.00	July 24, 1897	-----	-----
Cigarettes weighing more than 3 pounds per M.	3.00	July 24, 1897	June 13, 1898	10
Weighing not more than 3 pounds per M.	1.00	July 24, 1897	June 13, 1898	10
Cigars weighing more than 3 pounds per M.	3.00	June 13, 1898	-----	-----
Weighing not more than 3 pounds per M.	1.00	June 13, 1898	-----	-----
Cigarettes weighing more than 3 pounds per M.	3.60	June 13, 1898	-----	-----
Weighing not more than 3 pounds per M.	1.50	June 13, 1898	-----	-----

The act of July 1, 1862, went into operation September 1, 1862.

The act of July 20, 1868, first required payment of tax on cigars by stamps.

Assessment of tax on cigars removed without stamps. (§3371, p. 246.)

Authority of Commissioner to examine returns of cigar manufacturers and to treat deficiency in product based on the return of one thousand cigars for every 25 pounds of tobacco as prima facie evidence of nonpayment of taxes. (See note under §3371, p. 246.)

Section 3362 provides that fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco may be sold in bulk as material, and without the payment of tax, by one manufacturer directly to another manufacturer, or for export, under such restrictions, rules, and regulations as the Commissioner of Internal Revenue may prescribe. This relates to cigar manufacturers as well as manufacturers of tobacco.

SEC. 3395. The Commissioner of Internal Revenue shall cause to be prepared, for payment of the tax upon cigars, suitable stamps denoting the tax thereon. Such stamps shall be furnished to collectors requiring them, and collectors shall, if there be any cigar-manufacturers within their respective districts, keep on hand at all times a supply equal in amount to two months' sales thereof, and shall sell the same only to the cigar-manufacturers who have given bonds and paid the special tax, as required by law, in their districts, respectively, and to importers of cigars, who are required to affix the same to imported cigars in the custody of customs officers, and to persons required by law to affix the same to cigars on hand after the first day of April, eighteen hundred and sixty-nine. Every collector shall keep an account of the number, amount, and denominate values of the stamps sold by him to each cigar-manufacturer, and to other persons above described.

Stamps, now prepared, furnished, and accounted for.

See sections 3445 and 3446 as amended (p. 339) as to authority to prescribe how stamps shall be attached, canceled, etc.

Sale of cigar stamps to sheriff or constable. (25 Int. Rev. Rec., 21.)

Section 3369 provides that such stamps as may be required to stamp cigars sold under distraint by any collector of internal revenue, or for stamping any cigars which may have been abandoned, condemned, or forfeited and sold by order of court or of any Government officer for the benefit of the United States, may, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe, be used by the collector making such sale, or furnished by a collector to a United States marshal, or to any other Government officer making such sale for the benefit of the United States, without making payment for said stamps so used or delivered; and any revenue collector using or furnishing stamps in manner as aforesaid, on presenting vouchers satisfactory to the Commissioner of Internal Revenue, shall be allowed credit for the same in settling his stamp account with the Department. In case it shall appear that any abandoned, condemned, or forfeited cigars, when offered for sale, will not bring a price equal to the tax due and payable thereon, such goods shall not be sold for consumption in the United States; and upon application made to the Commissioner of Internal Revenue, he is authorized and directed to order the destruction of such cigars by the officer in whose custody and control the same may be at the time, and in such manner and under such regulations as the Commissioner of Internal Revenue may prescribe.

Regulations authorized.

SEC. 3396. The Commissioner of Internal Revenue may prescribe such regulations for the inspection of cigars, cheroots, and cigarettes, and the collection of the tax thereon, as he may deem most effective for the prevention of frauds in the payment of such tax.

Regulations concerning taxes on tobacco, snuff, and cigars. (Series 7, No. 8, revised; Cigar Manufacturers' Tax Manual, special, No. 85.)

Removal without properly boxing, stamping, or branding.

SEC. 3397, as amended by section 16, act of March 1, 1879 (20 Stat., 327). Whenever any cigars are removed from any manufactory, or place where cigars are made, without being packed in boxes as required by the provisions of this chapter, or without the proper stamp thereon denoting the tax, or without stamping, indenting, burning, or impressing into each box, in a legible and durable manner, the number of the cigars contained therein, the number of the manufactory, and the number of the district and the State, or without properly affixing thereon and canceling the stamp denoting the tax on the same, or are sold, or offered for sale, not properly boxed and stamped, they shall be forfeited to the United States. And every person who commits any of the above-described offenses shall be fined for each such offense not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than two years.

Penalty.

Using fraudulent or imitation stamps.

And every person who packs cigars in any box bearing a false or fraudulent or counterfeit stamp, or who affixes to any box containing cigars a stamp in the similitude or likeness of any stamp required to be used by the laws of the United States, whether the same be a customs or internal-revenue stamp, or who buys, receives, or has in his possession any cigars on which the tax to which they are liable has not been paid, or who removes, or causes to be removed, from any box any stamp denoting the tax on cigars, with intent to use the same, or who uses, or permits any other person to use, any stamp so removed, or who receives, buys,

sells, gives away, or has in his possession any stamp so removed, or who makes any other fraudulent use of any stamp intended for cigars, or who removes from the place of manufacture any cigars not properly boxed and stamped as required by law, shall be deemed guilty of a felony, and shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than three years.

Penalty.

Provided, That cigars packed expressly for export, and which shall be exported to a foreign country under the restrictions and regulations prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury, shall be exempt from the provisions of this section, and also from the provisions of section thirty-three hundred and ninety-three of the Revised Statutes, requiring a label to be affixed to each box.

Cigars packed for export.

The penalties for selling cigars not properly packed and stamped apply also in the case of cigarettes. (United States v. Mena, 29 Int. Rev. Rec., 190; United States v. Sapinkow, 90 Fed. Rep., 654.)

Labels for cigars bearing a resemblance to customs stamps. (30 Int. Rev. Rec., 301.)

Provisions as to peddlers of tobacco, snuff, and cigars. (See under tobacco, § 3381, 3382, 3383, 3384, p. 250.)

Sample packages containing either a less or a greater number of cigars than denoted by the stamp affixed to the packages are subject to forfeiture.—A manufacturer can not lawfully carry on business on factory premises as a dealer in tobacco, snuff, or cigars made at other manufactories. If he desires to buy and sell products of other factories he must carry on such business at some place separate from his factory premises. (Vol. 1, Treas. Dec. (1899), No. 21257.)

No other brands except legal brands. (17 Int. Rev. Rec., 55.)

Using fraudulent or imitation stamps. (United States v. Jacoby, 12 Blatch., 491.)

Cigars can not be taken out of boxes and repacked in the same boxes again without new stamps. (United States v. 4,000 Cigars, 25 Int. Rev. Rec., 132.)

Other cases on this section, United States v. 76,125 Cigars (18 Fed. Rep., 147; 29 Int. Rev. Rec., 341; 22 Blatch., 353; 30 Int. Rev. Rec., 279); United States v. Edwards (17 Int. Rev. Rec., 126).

Where a sheriff or constable removes cigars from a cigar factory without the same being properly boxed and stamped, and sells the same unstamped, he is liable to the penalty prescribed.—Instructions as to action in such cases (Vol. 1, Treas. Dec., (1899), No. 21167.)

Stamps on boxes of cigars must be properly affixed and canceled to avoid liability to seizure. (Vol. 1, Treas. Dec. (1899), No. 19063.)

Relative to canceling stamps. (See section 3445, p. 339.)

SEC. 3398. The absence of the proper revenue stamp on any box of cigars sold, or offered for sale, or kept for sale, shall be notice to all persons that the tax has not been paid thereon, and shall be prima-facie evidence of the non-payment thereof, and such cigars shall be forfeited to the United States.

Absence of stamps evidence of nonpayment of tax.

Section 3376 provides that every manufacturer or other person who sells, or offers for sale, any box or other package of tobacco, snuff, or cigars, having affixed thereto any fraudulent, spurious, imitation, or counterfeit stamp, or stamp that has been previously used, or sells from any such fraudulently stamped box or package, or has in his possession any box or package as afore-

said, knowing the same to be fraudulently stamped, shall, for each such offense, be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than one year nor more than three years.

United States v. Edwards 17 Int. Rev. Rec., 126.

Cigars manufactured on shares, commission, or contract, how stamped.

SEC. 3399. Whenever cigars of any description are manufactured, in whole or in part, upon commission or shares, or the material is furnished by one party and manufactured by another, or the material is furnished or sold by one party with an understanding or agreement with another that the cigars are to be received in payment therefor, or for any part thereof, the stamps required by law shall be affixed by the actual maker before the cigars are removed from the place of manufacturing. And in case of fraud on the part of either of said parties in respect to said manufacture, or of any collusion on their part with intent to defraud the revenue, such material and cigars shall be forfeited to the United States; and every person engaged in such fraud or collusion shall be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned for not less than six months nor more than three years.

Fraud, penalty.

Forfeiture of property for selling, etc., contrary to law, using false stamps, etc.

SEC. 3400. Every manufacturer of cigars who removes or sells any cigars without payment of the special tax as a cigar manufacturer, or without having given bond as such, or without the proper stamps denoting the tax thereon; or who makes false or fraudulent entries of the manufacture or sale of any cigars; or makes false or fraudulent entries of the purchase or sale of leaf-tobacco, tobacco-stems, or other material used in the manufacture of cigars; or who affixes any false, forged, spurious, fraudulent, or counterfeit stamp, or imitation of any stamp, required by law to any box containing any cigars, shall, in addition to the penalties elsewhere provided in this Title for such offenses, forfeit to the United States all raw material and manufactured or partly manufactured tobacco and cigars, and all machinery, tools, implements, apparatus, fixtures, boxes, barrels, and all other materials which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest in the building or factory, and the lot or tract of ground on which such building or factory is located, and all appurtenances thereunto belonging.

See sections 3708 R. S., 5413, p. 392, and 5430 R. S.

Forfeiture of property used for fraudulent purposes, without regard to ownership. (United States v. 230 Patented Machines, Vol. 3 Treas. Dec. (1903), Int. Rev. No. 54.)

Falsely representing cigars to have been made prior to July 20, 1868.

Penalty.

SEC. 3401. Every person who sells or offers for sale any cigars representing the same to have been manufactured and the tax paid thereon, prior to July twenty, eighteen hundred and sixty-eight, when the same were not so manufactured and the tax was not so paid, shall be liable to a penalty of five hundred dollars for each offense, and shall be deemed guilty of a misdemeanor, and shall be fined not

less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

SEC. 3402. All cigars imported from foreign countries shall pay, in addition to the import duties imposed thereon, the tax prescribed by law for cigars manufactured in the United States, and shall have the same stamps affixed. The stamps shall be affixed and canceled by the owner or importer of the cigars while they are in the custody of the proper custom-house officers, and the cigars shall not pass out of the custody of such officers until the stamps have been so affixed and canceled, but shall be put up in boxes containing quantities as prescribed in this chapter for cigars manufactured in the United States, before the stamps are affixed. And the owner or importer of such cigars shall be liable to all the penal provisions of this Title prescribed for manufacturers of cigars manufactured in the United States. Whenever it is necessary to take any cigars so imported to any place other than the public stores of the United States, for the purpose of affixing and canceling such stamps, the collector of customs of the port where such cigars are entered shall designate a bonded warehouse to which they shall be taken, under the control of such customs officer as such collector may direct. And every officer of customs who permits any such cigars to pass out of his custody or control, without compliance by the owner or importer thereof with the provisions of this section relating thereto, shall be deemed guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

Imported cigars to pay tax; stamps, when and by whom affixed.

Relative to packing and stamping imported cigars:

SEC. 2804. No cigars shall be imported unless the same are packed in boxes of not more than five hundred cigars in each box; and no entry of any imported cigars shall be allowed of less quantity than three thousand in a single package; and all cigars on importation shall be placed in public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected and a stamp affixed to each box indicating such inspection, with the date thereof. And the Secretary of the Treasury is hereby authorized to provide the requisite stamps, and to make all necessary regulations for carrying the above provisions of law into effect.

As to imported cigarettes, see section 3392 as amended, p. 258.

As to exportation of cigars, see under tobacco, section 3385, p. 251.

As to drawback on cigars. (§ 3386, p. 253.)

Instructions for stamping domestic cigars reimported. (27 Int. Rev. Rec., 398; 28 *ibid.*, 303; 33 *ibid.*, 151.)

Section 3377 as amended provides, "That scraps, cuttings, and clippings of tobacco imported from any foreign country may, after the proper customs duty has been paid thereon, be withdrawn in bulk without the payment of the internal-revenue tax, and transferred as material directly to the factory of a manufacturer of tobacco or snuff, or of a cigar manufacturer, under such restrictions and regulations as shall be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury."

SEC. 3403. All cigars of every description, on hand after the first day of April, eighteen hundred and sixty-nine, shall be taken to have been either manufactured or imported after

Cigars on hand after April 1, 1869.

the passage of the internal-revenue act of July twentieth, eighteen hundred and sixty-eight, and shall be stamped accordingly.

Selling imported cigars not packed and stamped as required by law; penalty.

Every person who sells or offers for sale any imported cigars, or cigars purporting or claimed to have been imported, not put up in packages and stamped as provided by this chapter, shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years.

Purchasing cigars not branded or stamped; penalty.

SEC. 3404. Every person who purchases or receives for sale any cigars which have not been branded or stamped according to law, shall be liable to a penalty of fifty dollars for each such offense.

Person who purchases or receives for sale cigars under certain conditions; penalty.

SEC. 3405. Every person who purchases or receives for sale any cigars from any manufacturer who has not paid the special tax shall be liable for each offense to a penalty of one hundred dollars, and to a forfeiture of all the said articles so purchased or received, or of the full value thereof.

Stamps on emptied cigar boxes to be destroyed; penalty for neglect, etc.

SEC. 3406. Whenever any stamped box containing cigars, cheroots, or cigarettes, is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon. Any person who willfully neglects or refuses so to do shall, for each such offense, be fined not exceeding fifty dollars and imprisoned not less than ten days nor more than six months. And any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing cigars, cheroots, or cigarettes, any such stamped box, shall for each such offense be fined not exceeding one hundred dollars and be imprisoned not more than one year. Any revenue officer may destroy any emptied cigar-box upon which a cigar-stamp is found.

Destruction of emptied stamped cigar box.

Section 3315, as amended by section 5, act March 1, 1879, p. 195, provides for restamping packages of cigars and cigarettes which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

CHAPTER EIGHT.

OPIUM.

[Act of October 1, 1890 (26 Stat., 567).]

Sec.

36. Tax on opium manufactured in the United States for smoking purposes, ten dollars per pound.
37. Manufacturers shall file notices, inventories, and bonds, keep books and render returns, put up signs and affix factory number, and conduct his business under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary of the Treasury.
38. Prepared smoking opium imported into the United States to be stamped before removal from custom-house. Opium manufactured in the United States for

Sec.

- smoking purposes to be stamped before removal from place of manufacture.
39. Laws relating to stamps in case of manufactured tobacco and snuff to apply to the manufacture of opium for smoking purposes as far as applicable.
- 40 (*as amended*). Penalty of not more than one thousand dollars and imprisonment of not more than one year for each and every violation of law. All prepared smoking opium not stamped to be forfeited.
- Duty on imported opium, act of July 24, 1897.

SEC. 36. *Act of October 1, 1890. (26 Stat., 567.)* That an internal-revenue tax of ten dollars per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes; and no person shall engage in such manufacture who is not a citizen of the United States and who has not given the bond required by the Commissioner of Internal Revenue.

Tax on opium manufactured for smoking purposes.

SEC. 37. That every manufacturer of such opium shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue and in a penal sum of not less than five thousand dollars; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner of Internal Revenue.

Manufacturer's notices, inventories, bonds, books, returns, and signs.

Penal sum of bond.

SEC. 38. That all prepared smoking opium imported into the United States shall, before removal from the custom-house, be duly stamped in such manner as to denote that the duty thereon has been paid; and that all opium manufactured in the United States for smoking purposes, before being removed from the place of manufacture, whether for consumption or storage, shall be duly stamped

Stamps.

in such permanent manner as to denote the payment of the internal-revenue tax thereon.

Sections 3369,
3218, 3445, 3446.

SEC. 39. That the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, cancellation, and destruction of stamps relating to tobacco and snuff, as far as applicable are hereby made to apply to stamps provided for by the preceding section.

See sections 3369, p. 245; 3218, p. 103; 3445 and 3446, p. 339.

Penalty.

SEC. 40, *as amended by the act of March 3, 1897. (29 Stat., 228.)* That a penalty of not more than one thousand dollars, or imprisonment not more than one year, or both, in the discretion of the court shall be imposed for each and every violation of the preceding sections of this act relating to opium by any person or persons; and all prepared smoking opium wherever found within the United States without stamps required by this act shall be forfeited, *and may be sold to the highest bidder, pursuant to the provisions of section thirty-four hundred and sixty, Revised Statutes, if not valued as therein provided at over five hundred dollars; but if valued at more than five hundred dollars the sale shall be made pursuant to the judgment of the court in the proceedings for condemnation or forfeiture.*

Pursuant to
provisions of sec.
3460.

Sale.

Regulations, series 7, No. 16. Concerning the tax on opium manufactured in the United States for smoking purposes.

The act of July 24, 1897 (30 Stat., 151) provided for duty on imported opium as follows:

Section 1, paragraph 43. Opium, crude or unmanufactured, and not adulterated, containing nine per centum and over of morphia, one dollar per pound; morphia or morphine, sulphate of, and all alkaloids or salts of opium, one dollar per ounce; aqueous extract of opium, for medicinal uses, and tincture of, as laudanum, and other liquid preparations of opium, not specially provided for in this Act, forty per centum *ad valorem*; opium containing less than nine per centum of morphia, and opium prepared for smoking, six dollars per pound; but opium prepared for smoking and other preparations of opium deposited in bonded warehouses shall not be removed therefrom without payment of duties, and such duties shall not be refunded.

CHAPTER NINE.

OLEOMARGARINE.

[Act of August 2, 1886 (24 Stat., 209).]

(This act took effect October 31, 1886.)

Sec.	Sec.
1. Butter defined.	13. Stamps on empty packages to be destroyed; penalty for failure; dealing in empty stamped packages.
2. Oleomargarine defined.	14. Authority to employ chemists and microscopists.
3. Special taxes.	Commissioner to decide in contested cases; appeal.
4. Penalties for nonpayment of special taxes.	15. Forfeiture of unstamped oleomargarine; penalty for defacing or removing stamps.
5. Manufacturer's notices, books, returns, bonds, signs, etc.	16. Oleomargarine removed for export.
6. Oleomargarine, how to be packed and sold; penalty.	17. Carrying on business as manufacturer in fraud of the revenue; penalties and forfeitures.
7. Manufacturer's labels, penalty for failing to affix.	18. Penalty for omitting things required and for doing things forbidden.
8. Tax, stamps, laws relative to stamps for tobacco and snuff made to apply.	19. Courts in which fines may be recovered.
9. Assessment of tax on oleomargarine when removed without stamps.	20. Commissioner to make regulations.
10. Tax on imported oleomargarine; penalty. Warehousing.	21. Date when act goes into effect; stock on hand.
11. Penalty for receiving for sale unstamped oleomargarine.	41. Act October 1, 1890, wholesale dealers to keep books.
12. Penalty for purchasing from a manufacturer who has not paid special tax; forfeiture.	

AN ACT defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine.

SEC. 1. That for the purposes of this act the word "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter. Butter, definition of.

SEC. 2. That for the purposes of this act certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," namely: All substances heretofore known as oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef-fat, suet, lard, lard-oil, vegetable-oil, annatto, and other coloring matter, intestinal fat, and offal fat made in imitation or semblance of butter, or when so made, calculated or intended to be sold as butter or for butter. Oleomargarine, definition of.

See construction of this section. (18 Op. Atty. Gen., 489; 32 Int. Rev. Rec., 333.)

"Golden Beef Drippings" decided to be oleomargarine. (33 Int. Rev. Rec., 37.)

Butter to which vegetable or animal oils are added in connection with annatto or other coloring matter regarded as oleomargarine. (34 Int. Rev. Rec., 397.)

Oleomargarine.—The article "Fruit of the Meadow" taxable as oleomargarine. (Vol. 1, Treas., Dec. (1898), No. 19478.)

The statute of Pennsylvania prohibiting the manufacture and sale of oleomargarine declared to be constitutional. (*Powell v. Commonwealth of Pennsylvania*, 127 U. S., 678; 34 Int. Rev. Rec., 166.)

Act of Virginia prohibiting the sale of oleomargarine, generally, is an interference with interstate commerce, and unconstitutional. (*Ex parte Scott et al.* (1895), 66 Fed. Rep., 45.)

Pennsylvania oleomargarine law, to the extent that it prohibits the introduction of oleomargarine from another State and its sale in the original package, unconstitutional. (*Schollenberger v. Pennsylvania*, 171 U. S., 1.)

New Hampshire law prohibiting the sale of oleomargarine unless it is of a pink color unconstitutional. (*Collins v. New Hampshire*, 171 U. S., 30.)

The oleomargarine law of August 2, 1886, is a revenue act by its express terms, and with its penal provisions is to be liberally construed; and the courts in construing it will not inquire into the motives which led to its enactment. (*Prather v. United States*, 9 Appeal Cases D. C., 82.)

Oleomargarine brought into a State can be sold in the original packages independently of the provisions of the State statute, and subject only to the provisions of the national statute. But the instant an original package is opened and its contents exposed for sale at retail, they thereby, to adopt the language of the Supreme Court (135 U. S., 124), "become mingled with the property of the State and subject in every respect to its law." (*In re Worthen* (1891), U. S. Circuit Court S. D. Ohio, 58 Fed. Rep., 467.)

One who sells oleomargarine in the original package as imported into the State from another State, is not subject to arrest under a law of the State in which this sale occurs entirely forbidding the sale of oleomargarine, as such statute is an unconstitutional interference with interstate commerce. (*Minnesota v. Gooch*, U. S. Circuit Court, Dist. Minn. (1890), 44 Fed. Rep., 276.)

This act is, on its face, an act for levying taxes, and its primary object must be assumed to be the raising of revenue. (*In re Kollok*, 165 U. S., 526; 43 Int. Rev. Rec., 170.)

SEC. 3, imposing special taxes, will be found under that head, section 3244, as amended, p. 121.

SEC. 4, penalties for failure to pay special tax. [See sec. 3242b, p. 120.]

Manufacturer's
notices, inven-
tories, books,
bonds, and signs.

SEC. 5. That every manufacturer of oleomargarine shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of materials and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than five thousand dollars; and the sum of said bond may be increased from time to time, and additional sureties required at the discretion of the collector, or under instructions of the Commissioner of Internal Revenue.

SEC. 6. That all oleomargarine shall be packed by the manufacturer thereof in firkins, tubs, or other wooden packages not before used for that purpose, each containing not less than ten pounds, and marked, stamped, and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all sales made by manufacturers of oleomargarine, and wholesale dealers in oleomargarine shall be in original stamped packages. Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding ten pounds, and shall pack the oleomargarine sold by them in suitable wooden or paper packages, which shall be marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden or paper packages as above described, or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars, and be imprisoned not more than two years.

To be packed in new wooden packages, and marked, stamped, and branded.

Retail packages.

Penalty.

The definition of a retail dealer in oleomargarine, p. 130, must be construed in connection with section 6, which says: "Retail dealers in oleomargarine must sell only from original stamped packages, in quantities not exceeding 10 pounds."

Retail dealers in oleomargarine are entitled to sell as much as 10 pounds of oleomargarine to one person at one sale, but must remove the oleomargarine from the original manufacturer's package and put it up in another package properly marked. (32 Int. Rev. Rec., 365.)

Retail dealers must sell from the original stamped package. (34 Int. Rev. Rec., 17.)

In the trial of such an indictment it is sufficient for the Government to show that the article was sold in the defendant's place of business in the usual and ordinary course of business, whether it was sold by himself personally or by a clerk or employee. (*Prather v. United States*, 9 Appeal Cases, D. C., 82.)

Packing oleomargarine in paper. (32 Int. Rev. Rec., 397.)

No legal objection to using old boxes as materials for new packages. (32 Int. Rev. Rec., 405.)

Oleomargarine must not be so packed as to conceal the marks, brands, and stamps. (Letter to Collector Martin, January 22, 1891; 37 Int. Rev. Rec., 21.)

This section requires retail dealers to sell oleomargarine only from the original stamped packages, "and to pack it in suitable packages, marked and branded as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe," and imposes a specific penalty for its violation. *Held*, That the required approval of the Department being merely as to the kind of marks to be used, an indictment may be had for neglect to conform therewith. (*United States v. Eaton*, 144 U. S., 677, distinguished; *United States v. Ford*, 50 Fed. Rep., 467.)

Regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in regard to marks and brands on packages of oleomargarine, are authorized by law. They are matters of detail confided to the Executive branch, the authority to make which is within the competency of the legislative branch to confer. Courts will take judicial notice of them. (*Joseph Wilkins v. United States* (1899), 96 Fed. Rep., 837; Vol. 2, Treas. Dec., No. 21623.)

Relative to marking, branding, and stamping packages of oleomargarine. (Int. Rev. Circular No. 551, Vol. 3, Treas. Dec. (1900), Int. Rev. No. 31.)

Such power delegated to the Commissioner, with approval of the Secretary, involves no unconstitutional delegation of power (1897). (*In re Kollock*, 165 U. S., 526, 43 Int. Rev. Rec., 170; *Prather v. United States*, 9 Appeal Cases, D. C., 82.)

Label of manufacturer.

SEC. 7. That every manufacturer of oleomargarine shall securely affix, by pasting, on each package containing oleomargarine manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and State in which it is situated, these words: "Notice.—The manufacturer of the oleomargarine herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases." Every manufacturer of oleomargarine who neglects to affix such label to any package containing oleomargarine made by him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined fifty dollars for each package in respect to which such offense is committed.

Penalty for failure to affix label.

Tax 2 cents per pound.

SEC. 8. That upon oleomargarine which shall be manufactured and sold, or removed for consumption or use, there shall be assessed and collected a tax of two cents per pound, to be paid by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound. The tax levied by this section shall be represented by coupon stamps; and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section.

Stamps.
§ 3369.

See sections 3369, p. 245; 3445, p. 339; and 3446, p. 339, relative to stamps for tobacco, changes of stamps, etc.

Relative to refunding amounts paid for stamps on packages returned to the manufactory and contents reused. (33 Int. Rev. Rec., 93.)

Oleomargarine tax-paid stamps are issued in book form in denominations of 10, 20, 30, 40, 50, 60, 70, 80, 90, and 100 pounds. Each book contains 200 stamps and 1,800 coupons.

Assessment of tax within two years.

SEC. 9. That whenever any manufacturer of oleomargarine sells, or removes for sale or consumption, any oleomargarine upon which the tax is required to be paid by stamps, without the use of the proper stamps, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid, and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal.

Tax on imported oleomargarine.

SEC. 10. That all oleomargarine imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal-revenue tax of fifteen cents per pound, such tax to be represented by coupon stamps as in the case of oleomargarine manufactured in the United

States. The stamps shall be affixed and canceled by the owner or importer of the oleomargarine while it is in the custody of the proper custom-house officers; and the oleomargarine shall not pass out of the custody of said officers until the stamps have been so affixed and canceled, but shall be put up in wooden packages, each containing not less than ten pounds, as prescribed in this act for oleomargarine manufactured in the United States, before the stamps are affixed; and the owner or importer of such oleomargarine shall be liable to the penal provisions of this act prescribed for manufacturers of oleomargarine manufactured in the United States.

Affixing stamp.

Whenever it is necessary to take any oleomargarine so imported to any place other than the public stores of the United States for the purpose of affixing and canceling such stamps, the collector of customs of the port where such oleomargarine is entered shall designate a bonded warehouse to which it shall be taken, under the control of such customs officer as such collector may direct; and every officer of customs who permits any such oleomargarine to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of this section relating thereto, shall be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than three years.

Warehousing imported oleomargarine.

Penalty for violation by customs officer.

Every person who sells or offers for sale any imported oleomargarine, or oleomargarine purporting or claimed to have been imported, not put up in packages and stamped as provided by this act, shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than two years.

Penalty for selling if not stamped.

SEC. 11. That every person who knowingly purchases or receives for sale any oleomargarine which has not been branded or stamped according to law shall be liable to a penalty of fifty dollars for each such offense.

Penalty for purchasing if not stamped.

SEC. 12. That every person who knowingly purchases or receives for sale any oleomargarine from any manufacturer who has not paid the special tax shall be liable for each offense to a penalty of one hundred dollars, and to a forfeiture of all articles so purchased or received, or of the full value thereof.

Penalty for purchasing from manufacturer not having paid special tax.

SEC. 13. That whenever any stamped package containing oleomargarine is emptied, it shall be the duty of the person in whose hands the same is to destroy utterly the stamps thereon; and any person who willfully neglects or refuses so to do shall for each such offense be fined not exceeding fifty dollars, and imprisoned not less than ten days nor more than six months.

Stamps on emptied packages to be destroyed.

Penalty for failure.

And any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleomargarine, any such stamped package, shall for each such offense be fined not exceeding one hundred dollars, and be imprisoned not more than one year.

Selling, buying, etc., empty stamped packages; penalty.

Any revenue officer may destroy any emptied oleomargarine package upon which the tax-paid stamp is found.

Chemists and
microscopists.

SEC. 14. That there shall be in the office of the Commissioner of Internal Revenue an analytical chemist and a microscopist, who shall each be appointed by the Secretary of the Treasury, and shall each receive a salary of two thousand five hundred dollars per annum; and the Commissioner of Internal Revenue may, whenever in his judgment the necessities of the service so require, employ chemists and microscopists, to be paid such compensation as he may deem proper, not exceeding in the aggregate any appropriation made for that purpose.

Commissioner
to decide in con-
tested cases.

And such Commissioner is authorized to decide what substances, extracts, mixtures, or compounds which may be submitted for his inspection in contested cases are to be taxed under this act; and his decision in matters of taxation under this act shall be final.

To decide as to
substances being
deleterious.

The Commissioner may also decide whether any substance made in imitation or semblance of butter, and intended for human consumption, contains ingredients deleterious to the public health; but in case of doubt or contest his decisions in this class of cases may be appealed from to a board hereby constituted for the purpose, and composed of the Surgeon-General of the Army, the Surgeon General of the Navy, and the Commissioner (Secretary) of Agriculture; and the decisions of this board shall be final in the premises.

Appeal.

See page 50 as to microscopist.

Forfeiture of
unstamped pack-
ages; also if dele-
terious.

SEC. 15. That all packages of oleomargarine subject to tax under this act, that shall be found without stamps or marks as herein provided, and all oleomargarine intended for human consumption which contains ingredients adjudged, as hereinbefore provided, to be deleterious to the public health, shall be forfeited to the United States.

Penalty for re-
moving stamps
and brands.

Any person who shall willfully remove or deface the stamps, marks, or brands on a package containing oleomargarine taxed as provided herein shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than two thousand dollars, and by imprisonment for not less than thirty days nor more than six months.

Export regula-
tions.

SEC. 16. That oleomargarine may be removed from the place of manufacture for export to a foreign country without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Every person who shall export oleomargarine shall brand upon every tub, firkin, or other package containing such article the word "oleomargarine", in plain Roman letters not less than one-half inch square.

Regulations, Series 7, No. 9, revised.

Forfeiture and
penalty in case of
fraud by manu-
facturer.

SEC. 17. That whenever any person engaged in carrying on the business of manufacturing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine produced by him, or any part thereof, he shall forfeit the factory and manufacturing apparatus used by him, and all oleomargarine and all raw material for the

production of oleomargarine found in the factory and on the factory premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years.

SEC. 18. That if any manufactnrer of oleomargarine, any dealer therein, or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything by this act prohibited, if there be no specific penalty or punishment imposed by any other section of this act for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall pay a penalty of one thousand dollars; and if the person so offending be the manufacturer of or a wholesale dealer in oleomargarine, all the oleomargarine owned by him, or in which he has any interest as owner, shall be forfeited to the United States.

Penalty for failure to comply with regulations, etc.

SEC. 19. That all fines, penalties, and forfeitures imposed by this act may be recovered in any court of competent jurisdiction.

Recovery of fines, etc.

SEC. 20. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may make all needful regulations for the carrying into effect of this act.

Regulations.

United States v. Eaton (144 U. S., 677).

As to force of regulations, see note under section 321, p. 47.

Regulations concerning oleomargarine, Series 7, No. 9, revised.

SEC. 21. That this act shall go into effect on the ninetyeth day after its passage; and all wooden packages containing ten or more pounds of oleomargarine found on the premises of any dealer on or after the ninetyeth day succeeding the date of the passage of this act shall be deemed to be taxable under section eight of this act, and shall be taxed, and shall have affixed thereto the stamps, marks, and brands required by this act or by regulations made pursuant to this act; and for the purposes of securing the affixing of the stamps, marks, and brands required by this act, the oleomargarine shall be regarded as having been manufactured and sold, or removed from the manufactory for consumption or use, on or after the day this act takes effect; and such stock on hand at the time of the taking effect of this act may be stamped, marked, and branded under special regulations of the Commissioner of Internal Revenue, approved by the Secretary of the Treasury; and the Commissioner of Internal Revenue may authorize the holder of such packages to mark and brand the same and to affix thereto the proper tax-paid stamps.

Act took effect October 31, 1886.

Stock on hand.

SEC. 41. *Act of October 1, 1890. (26 Stat., 621.)* That wholesale dealers in oleomargarine shall keep such books and render such returns in relation thereto as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require, and such books shall be open at all times to the inspection of any internal-revenue officer or agent.

Wholesale dealers in oleomargarine to keep books.

CHAPTER TEN.

FILLED CHEESE.

[ACT OF JUNE 6, 1896. (29 Stat., 253.)]

<p>Sec. 1 and 2. Definitions. 3. Special taxes. 4. Penalties. 5. Manufacturers' notice, books, bonds, etc. 6, 7, and 8. Marks, signs, label, stamps. 9 and 10. Tax on filled cheese. 11. Imported filled cheese.</p>	<p>Sec. 12 and 13. Penalties. 14. Destruction of stamps on empty packages. 15. Scientific tests. 16 and 17. Relative to fines and forfeitures. 18. Regulations authorized. 19. When act to take effect.</p>
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AN ACT Defining cheese, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of "filled cheese."

<p>Definition of cheese.</p>	<p>SEC. 1. <i>Act of June 6, 1896 (29 Stat., 253).</i> That for the purpose of this Act, the word "cheese" shall be understood to mean the food product known as cheese, and which is made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter.</p>
<p>Definition of filled cheese.</p>	<p>SEC. 2. That for the purposes of this Act certain substances and compounds shall be known and designated as "filled cheese," namely: All substances made of milk or skimmed milk, with the admixture of butter; animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese.</p>
<p>Special taxes.</p>	<p>SEC. 3. That special taxes are imposed as follows:</p>
<p>Manufacturers defined.</p>	<p>Manufacturers of filled cheese shall pay four hundred dollars for each and every factory per annum. Every person, firm, or corporation who manufactures filled cheese for sale shall be deemed a manufacturer of filled cheese. Wholesale dealers in filled cheese shall pay two hundred</p>
<p>Wholesale dealer defined.</p>	<p>and fifty dollars per annum. Every person, firm, or corporation who sells or offers for sale filled cheese in the original manufacturer's packages for resale, or to retail dealers as hereinafter defined, shall be deemed a wholesale dealer in filled cheese. But any manufacturer of filled cheese who has given the required bond and paid the required special tax, and who sells only filled cheese of his own production, at the place of manufacture, in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer in filled cheese on account of such sales.</p>
<p>Retail dealer.</p>	<p>Retail dealers in filled cheese shall pay twelve dollars per annum. Every person who sells filled cheese at retail, not for resale, and for actual consumption, shall be regarded as a retail dealer in filled cheese, and sections thirty-two hundred and thirty-two, thirty-two hundred and thirty-three,</p>
<p>Certain sections R. S. made applicable.</p>	

thirty-two hundred and thirty-four, thirty-two hundred and thirty-five, thirty-two hundred and thirty-six, thirty-two hundred and thirty-seven, thirty-two hundred and thirty-eight, thirty-two hundred and thirty-nine, thirty-two hundred and forty, thirty-two hundred and forty-one, thirty-two hundred and forty-three of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section and to the persons, firms, or corporations upon whom they are imposed: *Provided*, That all special taxes under this Act shall become due on the first day of July in every year, or on commencing any manufacture, trade, or business on which said tax is imposed. In the latter case the tax shall be reckoned proportionately from the first day of the month in which the liability to the special tax commences to the first day of July following.

Taxes due July 1, or on commencing business.

SEC. 4. That every person, firm, or corporation who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than four hundred dollars and not more than three thousand dollars; and every person, firm, or corporation who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than two hundred and fifty dollars nor more than one thousand dollars; and every person, firm, or corporation who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than forty nor more than five hundred dollars for each and every offense.

Penalty for violations—by manufacturer.

—by wholesale dealer.

—by retail dealer

SEC. 5. That every manufacturer of filled cheese shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of materials and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than five thousand dollars; and the amount of said bond may be increased from time to time, and additional sureties required, at the discretion of the collector or under instructions of the Commissioner of Internal Revenue. Any manufacturer of filled cheese who fails to comply with the provisions of this section or with the regulations herein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five hundred nor more than one thousand dollars.

Notices, inventories, and bonds.

Books and returns.

Regulations.

Penalty.

SEC. 6. That filled cheese shall be packed by the manufacturers in wooden packages only, not before used for that

Marks, stamps, and brands.

purpose, and marked, stamped, and branded with the words "filled cheese" in black-faced letters not less than two inches in length, in a circle in the center of the top and bottom of the cheese; and in black-faced letters of not less than two inches in length in line from the top to the bottom of the cheese, on the side in four places equidistant from each other; and the package containing such cheese shall be marked in the same manner, and in the same number of places, and in the same description of letters as above provided for the marking of the cheese; and all sales or consignments made by manufacturers of filled cheese to wholesale dealers in filled cheese or to exporters of filled cheese shall be in original stamped packages. Retail dealers in filled cheese shall sell only from original stamped packages, and shall pack the filled cheese when sold in suitable wooden or paper packages, which shall be marked and branded in accordance with rules and regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as hereinbefore provided and as above described, or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than fifty dollars and not more than five hundred dollars or be imprisoned not less than thirty days nor more than one year.

Retail dealers
to sell only from
original pack-
ages.

Penalty.

SEC. 7. That all retail and wholesale dealers in filled cheese shall display in a conspicuous place in his or their sales room a sign bearing the words "Filled cheese sold here" in black-faced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted; and any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than fifty dollars and not more than two hundred dollars.

Sign.

Penalty.

SEC. 8. That every manufacturer of filled cheese shall securely affix, by pasting on each package containing filled cheese manufactured by him, a label on which shall be printed, besides the number of the manufactory and the district and state in which it is situated, these words: "Notice.—The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases." Every manufacturer of filled cheese who neglects to affix such label to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package,

Label.

shall be fined fifty dollars for each package in respect to which such offense is committed. Penalty.

SEC. 9. That upon all filled cheese which shall be manufactured there shall be assessed and collected a tax of one cent per pound, to be paid by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound. The tax levied by this section shall be represented by coupon stamps; and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section. Tax represented by coupon stamps.
Laws made applicable.

See sections 3369, p. 245, 3218, p. 103, 3445 and 3446, p. 339 Revised Statutes.

SEC. 10. That whenever any manufacturer of filled cheese sells or removes for sale or consumption any filled cheese upon which the tax is required to be paid by stamps, without paying such tax, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such sale or removal, upon satisfactory proof, to estimate the amount of tax which has been omitted to be paid and to make an assessment therefor and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal. Commissioner can assess tax.

SEC. 11. That all filled cheese as herein defined imported from foreign countries shall, in addition to any import duty imposed on the same, pay an internal-revenue tax of eight cents per pound, such tax to be represented by coupon stamps; and such imported filled cheese and the packages containing the same shall be stamped, marked, and branded, as in the case of filled cheese manufactured in the United States. Imported filled cheese.

SEC. 12. That any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of fifty dollars for each such offense. Penalty.

SEC. 13. That every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax herein provided for shall be liable, for each offense, to a penalty of one hundred dollars and to a forfeiture of all articles so purchased or received, or of the full value thereof. Penalty.

SEC. 14. That whenever any stamped package containing filled cheese is emptied it shall be the duty of the person in whose hands the same is to destroy the stamps thereon; and any person who willfully neglects or refuses so to do shall, for each such offense, be fined not exceeding fifty dollars or imprisoned not less than ten days nor more than six months. Stamps to be destroyed on empty packages.

SEC. 15. That the Commissioner of Internal Revenue is authorized to have applied scientific tests, and to decide whether any substances used in the manufacture of filled cheese contain ingredients deleterious to health. But in case of doubt or contest his decision in this class of cases may be appealed from to a board hereby constituted for the Scientific tests.
Appeal board.

purpose, and composed of the Surgeon-General of the Army, the Surgeon-General of the Navy, and the Secretary of Agriculture, and the decision of this board shall be final in the premises.

Forfeiture.

SEC. 16. That all packages of filled cheese subject to tax under this Act that shall be found without stamps or marks as herein provided, and all filled cheese intended for human consumption which contains ingredients adjudged as hereinbefore provided to be deleterious to the public health, shall be forfeited to the United States.

Fines, penalties, and forfeitures.

SEC. 17. That all fines, penalties, and forfeitures imposed by this Act may be recovered in any court of competent jurisdiction.

Regulations.

SEC. 18. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful regulations for the carrying into effect the provisions of this Act.

Regulations, Series 7, No. 22. Relative to filled cheese.

When act to take effect.

SEC. 19. That this Act shall go into effect on the ninetyeth day after its passage, and all wooden packages containing ten or more pounds of filled cheese found on the premises of any dealer on and after the ninetyeth day succeeding the date of the passage of this Act, shall be deemed to be taxable under section nine of this Act, and shall be taxed, and shall have affixed thereto the stamps, marks, and brands required by this Act or by regulations made pursuant to this Act; and for the purpose of securing the affixing of the stamps, marks, and brands required by this Act, the filled cheese shall be regarded as having been manufactured and sold or removed from the manufactory for consumption or use on or after the day this Act takes effect; and such stock on hand at the time of the taking effect of this Act may be stamped, marked, and branded under special regulations of the Commissioner of Internal Revenue, approved by the Secretary of the Treasury; and the Commissioner of Internal Revenue may authorize the holder of such packages to mark and brand the same and to affix thereto the proper tax-paid stamps.

CHAPTER ELEVEN.

MIXED FLOUR.

[SECTION 35 TO 49, ACT OF JUNE 13, 1898. (30 Stat. 448.)]

(In effect August 12, 1898.)

Sec.	Sec.
35. Mixed flour defined.	43. Penalty and forfeiture.
36. Special tax.	44. Removal for export.
37. Marks and brands; penalty.	45. Destruction of stamps on empty packages; penalty.
38. Packages; penalty.	46. Penalties recoverable.
39. Label; penalty.	47. Regulations. Additional clerks and agents.
40. Tax, stamps, laws applicable. Repacked flour; penalty.	48. Penalty for subsequent violations.
41. Assessment of tax on mixed flour when removed without stamps.	49. Date when act takes effect.
42. Tax on imported mixed flour; penalty.	

SEC. 35. That for the purposes of this Act the words "mixed flour" shall be understood to mean the food product made from wheat mixed or blended in whole or in part with any other grain or other material, or the manufactured product of any other grain or other material than wheat. Mixed flour defined.

To constitute mixed flour the principal constituent of the mixture must be wheat flour. (Circular No. 188, Int. Rev. No. 514, Oct. 18, 1898; Vol. 2 Treas. Dec., No. 20203.)

SEC. 36. That every person, firm, or corporation, before engaging in the business of making, packing, or repacking mixed flour, shall pay a special tax at the rate of twelve dollars per annum, the same to be paid and posted in accordance with the provisions of sections thirty-two hundred and forty-two and thirty-two hundred and thirty-nine of the Revised Statutes, and subject to the fines and penalties therein imposed for any violation thereof. Special tax.

SEC. 37. That every person, firm, or corporation making, packing, or repacking mixed flour shall plainly mark or brand each package containing the same with the words "mixed flour" in plain black letters not less than two inches in length, together with the true weight of such package, the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed. In addition thereto, such maker or packer shall place in each package a card not smaller than two inches in width by three inches in length, upon which shall be printed the words "mixed flour," together with the names of the ingredients composing the same, and the name of the maker or packer, and the place where made or packed. Any person, firm, or corporation making, packing, or repacking mixed flour hereunder, failing to comply Marks and brands.

Penalty.

with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or be imprisoned not less than sixty days nor more than one year.

Packages.
Penalty.

SEC. 38. That all sales and consignments of mixed flour shall be in packages not before used for that purpose; and every person, firm, or corporation knowingly selling or offering for sale any mixed flour in other than marked and branded packages, as required by the provisions of this Act relating to the manufacture and sale of mixed flour, or who packs in any package or packages any mixed flour in any manner contrary to the provisions relating to the manufacture and sale of mixed flour of this Act, or who falsely marks or brands any package or packages containing mixed flour, or unlawfully removes such marks or brands, shall, for each such offense, be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or by imprisonment not less than thirty days nor more than one year.

Label.

SEC. 39. That in addition to the branding and marking of mixed flour as herein provided, there shall be affixed to the packages containing the same a label in the following words: "Notice.—The (manufacturer or packer, as the case may be) of the mixed flour herein contained has complied with all the requirements of law. Every person is cautioned not to use this package or label again or to remove the contents without destroying the revenue stamp thereon, under the penalty prescribed by law in such cases." Every person, firm, or corporation failing or neglecting to affix such label to any package containing mixed flour made or packed by him or them, or who removes from any such package any label so affixed, shall, upon conviction thereof, be fined not less than fifty dollars for each label so removed.

Penalty.

Regulation concerning the placing of caution labels upon packages of mixed flour. (Dept. Cir. No. 73; Int. Rev. No. 533, May 17, 1899; Vol. 1, Treas. Dec., No. 21168; Series 7, No. 25, p. 14.)

Regulation concerning the placing of a card, label, or other printed matter inside of package of mixed flour. (Dept. Cir. No. 189; Int. Rev. No. 515, Oct. 18, 1898; Vol. 2, Treas. Dec., No. 20204; Series 7, No. 25, p. 13.)

Tax.

SEC. 40. That barrels or other packages in which mixed flour may be packed shall contain not to exceed one hundred and ninety-six pounds; that upon the manufacture and sale of mixed flour there shall be levied a tax of four cents per barrel or other package containing one hundred and ninety-six pounds or more than ninety-eight pounds; two cents on every half barrel or other package containing ninety-eight pounds or more than forty-nine pounds; one cent on every quarter barrel or other package containing forty-nine pounds or more than twenty-four and one-half pounds; and one half cent on every one-eighth barrel or other package containing twenty-four and a half pounds or less, to be paid by the person, firm, or corporation making or packing said flour. The tax levied by this section shall be represented by coupon stamps, and the provisions of existing laws governing the engraving, issue, sale, accounta-

Stamps, laws
applicable.

bility, effacement, and destruction of stamps relating to tobacco and snuff shall, so far as applicable, be made to apply to stamps provided in this section: *Provided*, That when mixed flour, on the manufacture and sale of which the tax herein imposed has been paid, is sold and then repacked without the addition of any other material, such repacked flour shall not be liable to any additional tax; but the packages containing such repacked flour shall be branded or marked as required by the provisions of section thirty-seven of this Act, and shall contain the card provided for in section thirty-seven hereof; and in addition thereto the person, firm, or corporation repacking mixed flour shall place on the packages containing the same a label in the following words: "Notice.—The contents of this package have been taken from a regular statutory package, upon which the tax has been duly paid." Any person violating the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, or by imprisonment not to exceed one year.

Repacked flour.

Penalty.

SEC. 41. That whenever any person, firm, or corporation sells, consigns, or removes for sale, consignment, or consumption any mixed flour upon which the tax required by this Act has not been paid, it shall be the duty of the Commissioner of Internal Revenue, for a period of not more than one year after such sale, consignment, or removal, upon satisfactory proof, to estimate the amount of tax which should have been paid, and to make an assessment therefor and certify the same to the collector of the proper district. The tax so assessed shall be in addition to the penalties imposed by this Act for an unauthorized sale or removal.

Assessment.

SEC. 42. That all mixed flours, imported from foreign countries, shall, in addition to any import duties imposed thereon, pay an internal-revenue tax equal in amount to the tax imposed under section forty of this Act, such tax to be represented by coupon stamps, and the packages containing such imported mixed flour shall be marked, branded, labeled, and stamped as in the case of mixed flour made or packed in the United States. Any person, firm, or corporation purchasing or receiving for sale or repacking any such mixed flour which has not been branded, labeled, or stamped, as required by this Act, or which is contained in packages which have not been marked, branded, labeled, or stamped, as required by this Act, shall, upon conviction, be fined not less than fifty dollars nor more than five hundred dollars.

Imported mixed flour.

Penalty.

SEC. 43. That any person, firm, or corporation knowingly purchasing or receiving for sale or for repacking and resale any mixed flour from any maker, packer, or importer, who has not paid the tax herein provided, shall, for each offense, be fined not less than fifty dollars, and forfeit to the United States all the articles so purchased or received, or the full value thereof.

Penalty and forfeiture.

SEC. 44. That mixed flour may be removed from the place of manufacture or from the place where packed for export to a foreign country without payment of tax or affix-

Removal for export.

ing stamps or label thereto, under such regulation and the filing of such bond and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. Every person, firm, or corporation who shall export mixed flour shall plainly mark on each package containing the same the words "mixed flour," and the names of the ingredients composing the same, the name of the maker or packer, and the place where made or packed, in accordance with the provisions of sections thirty-six to forty-five, inclusive, of this Act.

Regulations, Series 7, No. 25, Supplement No. 1: Concerning exportation of mixed flour.

Destruction of stamps.

SEC. 45. That whenever any package containing mixed flour is emptied it shall be the duty of the person in whose possession it is to destroy the stamp thereon. Any person disposing of such package without first having destroyed the stamp or mark or marks thereon shall, upon conviction, be punished by a fine not exceeding the sum of twenty-five dollars.

Penalty.

Penalties recoverable.

SEC. 46. That all fines, penalties, and forfeitures imposed by section thirty-six to section forty-five, both inclusive, of this Act may be recovered in any court of competent jurisdiction.

Regulations.

SEC. 47. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying into effect the provisions relating to the manufacture and sale of mixed flour, being section thirty-five to section forty-nine, both inclusive, of this Act, and the said Commissioner of Internal Revenue, by and with the approval of the Secretary of the Treasury, for the purpose of carrying said last-mentioned provisions of this Act into effect, is hereby authorized to employ such additional clerks and agents as may be necessary for that purpose, not to exceed twenty in number.

Additional clerks and agents.

Regulations concerning mixed flour.—Series 7, No. 25.

Penalty for subsequent violations.

SEC. 48. That any person, firm, or corporation found guilty of a second or any subsequent violation of any of the provisions of section thirty-six to section forty-five, both inclusive, relating to the manufacture and sale of mixed flour as aforesaid, of this Act shall, in addition to the penalties herein imposed, be imprisoned not less than thirty days nor more than ninety days.

Date of taking effect.

SEC. 49. That the provisions of this Act relating to the manufacture and sale of mixed flour shall take effect and be in force sixty days from and after the date of the passage of this Act; and all packages of mixed flour found on the premises of any person, firm, or corporation on said day, who has made, packed, or repacked the same, on which the tax herein authorized has not been paid, shall be deemed taxable under the provisions of section thirty-six to section forty-five, both inclusive, of this Act, and shall be taxed and have affixed thereon such marks, brands, labels, and stamps as required by the provisions of said sections or by the rules and regulations prescribed by the Commissioner of Internal Revenue, under authority of this Act.

CHAPTER TWELVE.

LEGACIES AND DISTRIBUTIVE SHARES OF PERSONAL PROPERTY.

[Sections 29 and 30. Act of June 13, 1898. (30 Stat., 464.)]

Sec.	Soc.
29. Who are subject to the tax. Rate of tax.	30. In case of refusal or neglect. Proceedings; collector to make list, eto.
30. Tax a lien for twenty years. By whom payable. Returns; receipts.	Penalty for refusal to exhibit records, etc.

LEGACIES AND DISTRIBUTIVE SHARES OF PERSONAL PROPERTY.

SEC. 29. *Act of June 13, 1898. (30 Stat., 464.)* That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows—that is to say: Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be:

First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property, as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

Second. Where the person or persons entitled to any beneficial interest in such property shall be the descendant of a brother or sister of the person who died possessed, as aforesaid, at the rate of one dollar and fifty cents for each and every hundred dollars of the clear value of such interest.

Third. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, of the person who died possessed as aforesaid, at the rate of three dollars for

Legacies and distributive shares where the whole amount of personal property left exceeds \$10,000.

Lineal issue or lineal ancestor, brother or sister.

Descendant of a brother or sister.

Brother or sister of the father or mother or a descendant.

each and every hundred dollars of the clear value of such interest.

Brother or sister of the grandfather or grandmother.

Fourth. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother, of the person who died possessed as aforesaid, at the rate of four dollars for each and every hundred dollars of the clear value of such interest.

Any other degree of collateral consanguinity or stranger in blood or a body politic or corporate.

Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: *Provided*, That all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the person (who) died possessed, as aforesaid, shall be exempt from tax or duty.

Husband or wife exempt.

When the whole amount for distribution is over \$25,000 and not over \$100,000.

Where the amount or value of said property shall exceed the sum of twenty five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; and where the amount or value of said property shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by two and one-half; and where the amount or value of said property shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three.

Over \$100,000 and not over \$500,000.

Over \$500,000 and not over \$1,000,000.

Over \$1,000,000.

Op. Atty. Gen., construing section 29. January 5, 1899. (Vol. 1, Treas. Dec. (1899), No. 20545.)

Legacy tax accrues where the whole amount of personal property left for distribution, after payment of legal debts and expenses, exceeds the sum of \$10,000, without regard to the amount or value of each legacy or share. (Vol. 2, Treas. Dec. (1899), No. 21649.)

Tax a lien for twenty years.

SEC. 80. That the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such

Tax must be paid by executor, etc., before distribution.

Schedule, list, or statement in duplicate to be made and rendered.

form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector; and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as herein-after provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator, or trustee shall refuse or neglect to pay the aforesaid duty or tax to the collector or deputy collector, as aforesaid, within the time hereinbefore provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement of such legacies, property, or personal estate, under oath, as aforesaid, or shall deliver to said collector or deputy collector a false schedule or statement of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interests therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon; and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold under such judgment or decree, executed by the officer lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment

Receipt of the collector.

Proceedings in case of neglect.

Collector or deputy collector to make list and assess the duty.

Legal proceedings.

Deed of the proper officer to vest title in the purchaser.

or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this Act. And every person or persons who shall have in his possession, charge, or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die, as aforesaid, shall exhibit the same at the request of the collector or deputy collector of the district, and to any law officer of the United States, in the performance of his duty under this Act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody any such records, files, or papers, shall refuse or neglect to exhibit the same on request, as aforesaid, he shall forfeit and pay the sum of five hundred dollars: *Provided*, That in all legal controversies where such deed or title shall be the subject of judicial investigation, the recital in said deed shall be prima facie evidence of its truth, and that the requirements of the law had been complied with by the officers of the Government.

Penalty for refusing to exhibit records, files, etc.

Recital in deed to be prima facie evidence.

See section 3467, Appendix, p. 396.

Section 29 took effect immediately, being within the exception in section 51, p. 354, which declares "that this act shall take effect on the day next succeeding the date of its passage, except as otherwise specially provided for."

Instructions concerning the tax on legacies and distributive shares. Regulations, Series 7, No. 3, revised, January 28, 1899; and circular No. 527 dated March 31, 1899.

The tax must be paid on a legacy before its distribution to the legatees.

No tax is due unless the whole amount of said personal property passing from the decedent exceeds in value ten thousand dollars.

In all cases where legacy taxes are due, the executors, administrators, or trustee should immediately make return on Form No. 419, revised.

The law taxing legacies is constitutional. (*High v. Coyne*, Collector, Circuit Court N. Dist. Ill., 1899; 93 Fed. Rep., 450.)

The legacy tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee. (*United States v. Perkins*, 163 U. S., 625.)

Where the property of the decedent includes United States bonds, the tax may be assessed upon the basis of their value. The tax is not imposed upon the bonds, but is merely a tax upon the privilege of acquiring property by inheritance. (*Wallace et al v. Myers*, Comptroller, Circuit Court S. Dist. N. Y., 1889; 38 Fed. Rep., 184.)

State inheritance tax laws declared constitutional. (*Magoun v. Illinois Trust and Savings Bank*, 170 U. S., 283.)

The personal property going to the widow is to be included in making up the total value of the estate, for the purpose of determining whether the "whole amount" of personal property exceeds "the sum of \$10,000 in actual value." (Vol. 1, Treas. Dec. (1899), No. 20950.)

The whole amount of personal property left for distribution, after payment of legal debts and expenses, determines the rate of tax without regard to the amount or value of each legacy or share. (Vol. 1, Treas. Dec. (1899), No. 20587.)

In the case of a decedent, who executed a will in New York, where she was then residing, but whose domicile at the time of her death was not in the United States, the tax accrues. The law makes no discrimination between the estates of resident and nonresident decedents. (Vol. 1, Treas. Dec. (1899), No. 21052.)

Legacy to a daughter-in-law is subject to tax under paragraph 5, section 29. (Vol. 1, Treas. Dec. (1899), No. 20608.)

A bequest made in Government bonds to a city, the income to be expended in the maintenance and improvement of a public park, held taxable. No exception in cases of bequests for benevolent purposes, or bequests to a city. The tax is not upon the property, but upon the right to dispose of it. A bequest of Government bonds liable. (Vol. 1, Treas. Dec. (1899), 20791.)

No legacy tax accrues where the testator died prior to June 13, 1898, even though part of the estate is still in process of settlement, if there is nothing in the terms of the will which postpones the right of the legatees to the immediate possession and enjoyment of their legacies upon the death of the testator. (Vol. 1, Treas. Dec. (1899), No. 20946.)

The law does not state whether the tax on legacies should be deducted from the individual legacies, but it is understood that each share should bear its own tax unless otherwise specified in the will. (Vol. 2, Treas. Dec. (1898), No. 20089; vol. 1, Ibid. (1899), No. 21022; vol. 2, Ibid. (1899), No. 21649.)

The law does not exempt heirlooms from the legacy tax. A legacy conditioned on legatee marrying is subject to tax, but the tax is not payable until the legacy is payable. (Vol. 2, Treas. Dec. (1898), No. 20392.)

Legacies to charitable institutions are not exempt. (Vol. 2, Treas. Dec. (1898), No. 20421.)

Beneficial interests held in trust by trustees are subject to tax, even though their taxable value can not be determined in all cases until a certain contingency arises, such as the termination of a life interest. (Vol. 2, Treas. Dec. (1898), No. 20445.)

Legacies paid out of the proceeds of real estate, directed to be sold for that purpose, are not subject to the tax upon legacies arising from personal property. Where estates consist of both real and personal property, the whole amount of the personal property should be appraised separately from the real property. (Vol. 1, Treas. Dec. (1899), No. 20596.)

Where mortgages and notes are assets of an estate, moneys derived therefrom, although so derived through foreclosure and sale of the real estate by the executor or administrator, should be included in the personal property left for distribution. (Vol. 1, Treas. Dec. (1899), No. 21049.)

Mode of procedure in cases where an executor, administrator, or trustee has distributed an estate on which tax has accrued without first paying the legacy tax. (Vol. 1, Treas. Dec. (1899), No. 21078.)

Legacy tax accrues where the whole amount of personal property left for distribution, after payment of legal debts and expenses, exceeds the sum of \$10,000, without regard to the amount or value of each legacy or share. (Vol. 2, Treas. Dec. (1899), No. 21649.)

Taxes on life interests, or interests for given periods, should be paid at one time, and not annually. (Vol. 2, Treas. Dec. (1899), No. 21778.)

The old law relative to legacies. Sections 124 and 125, act of June 30, 1864, amended by act of July 13, 1866, R. S. Section 3438, R. S. (§ 3438-3440, R. S.; repealed by act July 14, 1870.)

The act of July 14, 1870 (16 Stat., 256), repealed taxes on legacies and successions under the old law. The repeal took effect on and after October 1, 1870; but section 17 of the repealing act saved "all taxes properly assessed, or liable to be assessed, or accruing under the provisions of former acts."

Decisions under the old act. The succession tax not a direct tax; law constitutional. (*Scholey v. Rew*, 23 Wall., 331.)

Tax not due on successions to which the successors became entitled in possession since October 1, 1870. (*Clapp v. Mason*, 94 U. S., 589; 23 Int. Rev. Rec., 144.)

Legacies not taxable where payable after October 1, 1870. (*Mason v. Sargent*, 104; U. S., 689; 28 Int. Rev. Rec., 89; *Sturges v. United States*, 117 U. S., 363.) Suit against executor or administrator; stale claims. (*United States v. Trucks*, admr., 32 Int. Rev. Rec., 184.)

CHAPTER THIRTEEN.

EXCISE TAXES ON PERSONS, FIRMS, COMPANIES, AND CORPORATIONS ENGAGED IN REFINING PETROLEUM AND SUGAR.

[(Act of June 13, 1898, 30 Stat., 464.)]

Every person, etc., whose gross annual receipts exceed \$250,000 subject to tax.

SEC. 27. *Act of June 13, 1898.* That every person, firm, corporation, or company carrying on or doing the business of refining petroleum, or refining sugar, or owning or controlling any pipe line for transporting oil or other products, whose gross annual receipts exceed two hundred and fifty thousand dollars, shall be subject to pay annually a special excise tax equivalent to one-quarter of one per centum on the gross amount of all receipts of such persons, firms, corporations, and companies in their respective business in excess of said sum of two hundred and fifty thousand dollars.

Rate of tax.

Monthly returns to be made.

And a true and accurate return of the amount of gross receipts as aforesaid shall be made and rendered monthly by each of such associations, corporations, companies, or persons to the collector of the district in which any such association, corporation, or company may be located, or in which such person has his place of business. Such return shall be verified under oath by the person making the same, or, in case of corporations, by the president or chief officer thereof. Any person or officer failing or refusing to make return as aforesaid, or who shall make a false or fraudulent return, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars for each failure or refusal to make return as aforesaid and for each and every false or fraudulent return.

Penalty for failure to make return.

The provisions of section 27 do not apply to beet-sugar factories where sugar is made directly from beets and there is no refining except in the process of manufacture. (Vol. 2, Treas. Dec. (1898), No. 19831.)

The term "pipe line" applies only to the comparatively recent system of transportation by which oil or other products are conveyed from place to place through pipes, instead of in tanks, barrels, etc., transported by rail or other conveyance, and is not intended to apply to gas mains and pipes through which gas is conveyed and distributed directly to the consumer. (Vol. 2, Treas. Dec. (1899), No. 21341.)

Gross receipts taxable under section 27. (Vol. 2, Treas. Dec., (1899), No. 21367.)

As to what constitutes a refiner of oil, within the meaning of this section. (Vol. 2, Treas. Dec. (1898), No. 20002.)

Returns of gross receipts to be made for period ending June 30, and for each monthly period thereafter. Tax on such gross receipts accruing each month assessable under section 31 of that act. (Vol. 2, Treas. Dec. (1898), No. 20023.)

Persons, firms, and companies owning or controlling pipe lines connected with mains or pipes for distributing natural or artificial gas not exempt from tax. (Vol. 2, Treas. Dec. (1899), No. 21494.)

CHAPTER FOURTEEN.

STAMP TAXES ON SPECIFIC OBJECTS.

Sec.

3422. Affixing stamps to instruments to render them valid.

3423. Stamps to be canceled.

3424. Commissioner to prescribe mode of cancellation.

3426 (amended). Redemption of stamps, etc.

[3426a.] Proviso as to documentary stamps.

[3426b.] Limitations of time for presentation of claims for allowance on account of stamps.

3429 (amended). Forging, counterfeiting, etc., or fraudulently using or selling stamps, etc.; penalties.

3433. Articles intended for exportation, to be manufactured in bonded warehouses.

[3433a.] Withdrawal of distilled spirits by manufacturer of cordials, liquors, etc.

[3433b.] Section 15, act May 28, 1880. Allowance for leakage.

Section 15, act July 24, 1897.

3434. Removal in bond to Pacific coast for exportation.

27. Act of July 24, 1897. Duties on reimported taxable articles.

3437. Assessment of stamp taxes where articles are removed without being stamped.

Act of June 13, 1898:

Sec. 6. Adhesive stamps; general provisions.

7. Unstamped documents not competent evidence; penalties.

8. Counterfeiting stamps, or dies; removing and reusing stamps; penalty.

9. Cancellation of stamps.

Act of June 13, 1898—Continued.

Sec. 10. Penalty for issuing or accepting bill of exchange unstamped.

11. Acceptor must affix stamp.

12. Stamps to be sold by whom.

13. Provisions for stamping any document issued without stamps.

14. Using instruments as evidence.

15. Recording unstamped instruments.

16. When instruments invalid.

17. What bonds, etc., are exempt.

18. Telegraph messages; exemption.

19. As to dies; Schedule B.

20. Penalty for sale of drugs in violation of law.

21. Penalty for removing stamps in violation of law.

22. Penalty, maker, etc., who sells articles mentioned in Schedule B in violation of law; exemption.

23. Manufacturer to file declaration in writing with collector. Penalty for making false report.

24. Definition of manufacturer (under Schedule B). Stamps on imported merchandise.

25. Stamps. Schedule A; Schedule B.

26. Allowance of drawback; evidence, etc.

28. Tax on every seat in palace or parlor car and every berth in sleeping car sold

For former acts of Congress requiring stamps to be affixed to certain written instruments, see act of July 1, 1862, Schedule B following section 110 (12 Stat., 479); act of March 3, 1863, section 6 (12 Stat., 720); act of June 30, 1864, section 151 (13 Stat., 291); act of March 3, 1865, section 1 (13 Stat., 469); act of July 13, 1866 (14 Stat., 141); act of June 23, 1874, section 1 (18 Stat., part 3, 250).

The act of June 6, 1872, section 36 (17 Stat., 256), provided for the repeal, on and after October 31, 1872, of stamp taxes on instruments, except the tax of 2 cents on bank checks, drafts, and orders, which was repealed by the act of March 3, 1883 (22 Stat., 488).

Decisions under former internal-revenue laws requiring stamps upon instruments (Pugh v. McCormick, 14 Wall., 361; 15 Int. Rev. Rec., 96; United States v. Isham, 17 Wall., 496; 19 Int. Rev. Rec., 84; Hall v. Jordan, 19 Wall., 271).

SEC. 3422. * * * *Provided*, That, hereafter, in all cases where the party has not affixed to any instrument the stamp required by law thereon, at the time of making or issuing

Affixing stamps to unstamped instruments.

the said instrument, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or if said instrument be lost, to a copy thereof, he or they shall appear before the collector of the revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of double the amount of tax remaining unpaid, but in no case less than five dollars, and where the whole amount of the tax denoted by the stamp required shall exceed the sum of fifty dollars, on payment also of interest, at the rate of six per centum on said tax from the day on which such stamp ought to have been affixed, affix the proper stamp to such instrument or copy, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made or issued.

When instruments not stamped through accident, mistake, etc.

Act of Feb. 18, 1875. (18 Stat., 316.)

Collector can remit penalty.

And provided further, That where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped at the time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamps, or to evade or delay the payment thereof, then, and in such case, if such instrument, or, if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of revenue to be stamped; and the stamp-tax chargeable thereon shall be paid, it shall be lawful for the said collector to remit the penalty aforesaid, and to cause such instrument to be duly stamped.

And when the original instrument, or a certified or duly proved copy thereof, as aforesaid, duly stamped so as to entitle the same to be recorded, shall be presented to the clerk, register, recorder, or other officer having charge of the original records, it shall be lawful for such officer, upon the payment of the fee legally chargeable for the recording thereof, to make a new record thereof, or to note upon the original record the fact that the error or omission in the stamping of said original instrument, has been corrected pursuant to law; and the original instrument, or such certified copy of the record thereof may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped. But no right acquired in good faith before the stamping of such instrument or copy thereof, and the recording thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid.

The above section has been practically superseded by section 13, act of June 13, 1898 (30 Stat., 448), p. 304.

See act to provide for the stamping of unstamped instruments, etc., approved June 23, 1874 (18 Stat., 250), and act to extend the time for stamping unstamped instruments approved February 25, 1876 (19 Stat., 5).

SEC. 3423. In all cases where an adhesive stamp is used for denoting any tax imposed under this chapter, except as hereinafter provided, the person using or affixing the same shall write thereon the initials of his name and the date on which such stamp is attached or used, so that it may not again be used. And every person who fraudulently makes use of an adhesive stamp to denote any tax imposed by this chapter without so effectually canceling and obliterating such stamp, except as before mentioned, shall forfeit the sum of fifty dollars. * * *

Stamps to be canceled.

SEC. 3424. The Commissioner of Internal Revenue is authorized to prescribe such method for the cancellation of stamps as substitute for, or in addition to, the method prescribed in this chapter, as he may deem expedient and effectual. And he is authorized, in his discretion, to make the application of such method imperative upon the manufacturers of proprietary articles, or articles included in Schedule A.

Method of cancellation.

See sections 9, p. 301, and 25, p. 309, act of June 13, 1898.

SEC. 3426, *as amended by section 17, act of March 1, 1879 (20 Stat., 327)*. The Commissioner of Internal Revenue may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps issued under the provisions of this title, or of any internal-revenue act, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which, through mistake, may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected; and such allowance or redemption shall be made either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner of Internal Revenue, or until satisfactory proof has been made showing the reason why the same can not be so returned: *Provided*, That nothing herein shall be held as authorizing redemption of, or allowance for, any of the stamps allowance for which is prohibited by the provisions of "An act relative to the redemption of unused stamps," approved July twelfth, eighteen hundred and seventy-six.

Redemption of stamps, etc.

The limitation in section 3228 does not apply to claims under this section. (15 Op. Atty. Gen., 426; 24 Int. Rev. Rec., 33.)

Court of Claims has jurisdiction to enforce payment of claim under this section allowed by Commissioner and disallowed by Comptroller. (*Kaufman v. United States*, 11 Ct. Clms., 659; 96 U. S., 567; 24 Int. Rev. Rec., 135.) See also Woolner's case (13 Ct. Clms., 355; 24 Int. Rev. Rec., 181).

Authority to issue duplicate stamps for spirits, etc., in place of stamps which have been lost or accidentally destroyed. (§ 3315, p. 195.)

Stamps not representing revenue taxes will not be redeemed by the Government. Case stamps for distilled spirits bottled in bond. (Letter to Collector Shearer, Oct. 28, 1897; 43 Int. Rev. Rec., 401.)

There is no material difference between the powers of the Commissioner under section 3426, and under sec. 3220, p. 103. Under section 3426 he is to "allow" the claim, which is done either by giving other stamps in lieu of those that have been spoiled, etc., or by repaying the amount or value. Under section 3220 he is to "refund" and "pay back." His payments in both cases must be made through the accounting officers of the Treasury Department, as he is not himself a disbursing officer. (*United States v. Savings Bank* (1881), 104 U. S., 733; 28 Int. Rev. Rec., 87.)

Evidence required in support of claims for amounts paid for adhesive stamps used in error or excess. (Vol. 1, Treas. Dec. (1899), No. 20875.)

Internal-revenue stamps redeemable only when owned and presented for redemption by persons or their legal representatives, authorized to purchase and use them for the payment of taxes. (Vol. 1, Treas. Dec. (1898), No. 19224.)

Proviso as to documentary stamps.

[SEC. 3426a.] *Act of July 12, 1876 (19 Stat., 88).* * * *

Provided, That from and after the passage of this act no allowance shall be made for documentary stamps, except those of the denomination of two cents, which when presented to the Commissioner of Internal Revenue are not found to be in the same condition as when issued by the Internal Revenue Department, or, if so required by the said Commissioner, when the person presenting the same can not satisfactorily trace the history thereof from their issue to their presentation as aforesaid.

Limitations of time for presentation of claims.

[SEC. 3426b.] *Section 17, act of March 1, 1879 (20 Stat., 327).* That claims for allowance on account of stamps arising under section thirty-four hundred and twenty-six of the Revised Statutes as restricted by "an act relative to the redemption of unused stamps, approved July twelfth, eighteen hundred and seventy-six," may be allowed, if presented within three years after the purchase of said stamps from the Government, or a Government agent for the sale of stamps, and not otherwise: *Provided*, That no existing claim for the redemption of or allowance for any internal-revenue stamps other than the two-cent documentary stamps shall be allowed, unless presented within one year from the date of the passage of this act: *Provided further*, That from and after June thirtieth, eighteen hundred and seventy-nine, no allowance shall be made, in any manner, for documentary stamps other than those of the denomination of two cents.

This section prohibits any allowance, after June 30, 1879, for documentary stamps except those of the denomination of 2 cents. Claims for the redemption of 2-cent documentary stamps and of proprietary stamps can not be allowed if presented after June 30, 1886, as such stamps were not issued after June 30, 1883.

Opinion of the Attorney-General, August 19, 1899, as to the power of the Commissioner of Internal Revenue to redeem unused documentary stamps. (Vol. 2, Treas. Dec. (1899), Nos. 21523 and 21560; *Contra*, Opinion Comptroller of Treasury, Vol. VI, Comp. Dec., 434; *Ibid.*, 558.)

SEC. 3429, as amended by section 17, act of March 1, 1879 (20 Stat., 327).

Penalties for forging, counterfeiting, or fraudulently using stamps, etc.

This section was practically reenacted by section 8 of the act of June 13, 1898. See page 300.

See also section 42 of the act of August 28, 1894, p. 329.

* * * * *

And the fact that any adhesive stamp so bought, sold, offered for sale, used, or had in possession as aforesaid, has been washed or restored by removing or altering the canceling or defacing marks thereon, shall be prima-facie proof that such stamp has been once used and removed by the possessor thereof from some paper, instrument, or writing, charged with taxes imposed by law, in violation of the provisions of this section.

Prima facie evidence of washing, restoring, etc.

Counterfeiting imitation wine or compound liquor stamps (§ 3328, p. 202).

Counterfeiting stamps for fermented liquors (§ 3346, p. 231).

Using imitation stamps on packages of distilled spirits (§ 3316a, p. 196).

Counterfeiting obligations or securities of the United States, which includes stamps (§ 5414, p. 392, Appendix).

SEC. 3433, as amended by section 10, act of October 1, 1890 (26 Stat., 614). All medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided by law, in order to be manufactured and sold or removed, without being charged with duty, and without having a stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in Treasury regulations as bonded warehouses, class two: *Provided*, That such manufacturer¹ shall first give satisfactory bonds to the collector of internal revenue for the faithful observance of all the provisions of law and the regulations as aforesaid, in amount not less than half of that required by the regulations of the Secretary of the Treasury from persons allowed bonded warehouses. Such goods, when manufactured in such warehouses, may be removed for exportation, under the direction of the proper officer having charge thereof, who shall be designated by the Secretary of the Treasury, without being charged with duty, and without having a stamp affixed thereto.

Certain articles intended for exportation to be manufactured in bonded warehouses.

Any manufacturer of the articles aforesaid, or of any of them, having such bonded warehouse as aforesaid, shall be at liberty, under such regulations as the Secretary of the Treasury may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of the said manufactured articles; and every article so used shall be exempt from the payment of stamp and excise duty by such manufacturer.

Articles and materials so to be used may be transferred from any bonded warehouse in which the same may be, under such regulations as the Secretary of the Treasury may prescribe, into any bonded warehouse in which such

¹This word "manufacturer" is erroneously printed "manufactory" in Revised Statutes, edition of 1878.

manufacture may be conducted, and may be used in such manufacture, and when so used shall be exempt from stamp and excise duty; and the receipt of the officer in charge, as aforesaid, shall be received as a voucher for the manufacture of such articles.

Any materials imported into the United States may, under such rules as the Secretary of the Treasury may prescribe, and under the direction of the proper officer, be removed in original packages from on shipboard, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture.

No article so removed, nor any article manufactured in said bonded warehouse, shall be taken therefrom except for exportation, under the direction of the proper officer having charge thereof, as aforesaid, whose certificate, describing the articles by their marks, or otherwise, the quantity, the date of importation, and name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bonds, or return of the amount of foreign import duties.

All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, and at the expense of the manufacturer.

Regulations of the Secretary of Treasury relating to the establishment of bonded manufacturing warehouses (1894).

Withdrawal of spirits by manufacturer of perfumery, etc.

[SEC. 3433a.] *Section 20, act of March 1, 1879 (20 Stat., 327), as amended by section 14, act of May 28, 1880 (21 Stat., 145).* That under such regulations and requirements as to stamps, bonds, and other security as shall be prescribed by the Commissioner of Internal Revenue, any manufacturer of medicines, preparations, *compositions, perfumeries, cosmetics, cordials, and other liquors*, for export, manufacturing the same in a duly constituted manufacturing warehouse, shall be authorized to withdraw, in original packages, from any distillery-warehouse, so much *distilled spirits* as he may require for the said purpose, without the payment of the internal-revenue tax thereon.

Allowance for leakage.

[SEC. 3433b.] *Section 15, act of May 28, 1880 (21 Stat., 145).* That where spirits are withdrawn from distillery warehouses for transfer to manufacturing warehouses, under the provisions of this act, it shall be lawful, under such rules and regulations and limitations as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for an allowance to be made for leakage or loss by any unavoidable accident, and without any fraud or negligence of the distiller, owner, exporter, carrier, or their agents or employees, occurring during transportation from a distillery warehouse to a manufacturing warehouse.

See Regulations, Series 7. No. 4, revised, relative to transportation and exportation of distilled spirits in bond free of tax.

[Section 15 of the act of July 24, 1897 (30 Stat., 207).] That all articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty and without having an internal-revenue stamp affixed thereto shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Articles manufactured of imported materials intended for exportation.

Manufacturer to give bond.

Manufacture of distilled spirits not permitted in such warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

What is exempt.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

Materials can be conveyed to bonded manufacturing warehouse without payment of tax.

No articles or materials received into such bonded manufacturing warehouse shall be withdrawn or removed therefrom except for direct shipment and exportation or for transportation and immediate exportation in bond under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or lading for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

No articles to be withdrawn except for shipment.

A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturers containing a detailed statement of all imported

Account to be kept by collector.

merchandise used by him in the manufacture of exported articles.

List to be filed with Secretary of Treasury.

Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

When articles manufactured can be withdrawn.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom.

Sec. 3433, p. 295, made applicable.

The provisions of Revised Statutes thirty-four hundred and thirty-three shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this act and to the merchandise conveyed therein.

This section is a reproduction of section 9 of the tariff act of August 28, 1894.

Removal in bond to Pacific coast for exportation.

SEC. 3434. Any article manufactured in a bonded warehouse established under the preceding section [Sec. 3433], and situated in any of the Atlantic States, may be removed therefrom for transportation to a customs bonded warehouse at any port on the Pacific coast of the United States, for the purpose only of being exported therefrom, under such regulations and upon the execution of such bonds or other security as the Secretary of the Treasury may prescribe.

Reimportation of articles exported in bond or with drawback.

Duty equal to the internal-revenue tax to be paid on articles reimported on which no internal-revenue tax was paid, or, if paid, was refunded.

SEC. 27. *Act July 24, 1897, (30 Stat., 210).* That upon the reimportation of articles once exported of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles, except articles manufactured in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported.

This section is a reproduction of section 2500, Revised Statutes, with amendment.

This is a re-enactment of section 19 of the act of August 28, 1894.

Assessment of stamp taxes when article is removed without being stamped.

SEC. 3437. Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale by the manufacturer thereof, without the use of the proper stamp, in addition to the penalties imposed by law for such sale or removal, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such removal or sale, upon such information as he can obtain, to estimate the amount of the tax which has been omitted to be paid, and to make an assessment therefor upon the manufacturer or producer of such article. He shall certify such assessment to the collector,

who shall immediately demand payment of such tax, and upon the neglect or refusal of payment by such manufacturer or producer, shall proceed to collect the same in the manner provided for the collection of other assessed taxes.

See section 47, act of June 13, 1898, p. 284.

As to assessments in general, section 3182, p. 85.

ADHESIVE STAMPS.

Stamp taxes imposed by the act of June 13, 1898. (30 Stat., 448.)

SEC. 6. That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

Tax on instruments.

Who shall pay the tax.

And there shall also be levied, collected, and paid, for and in respect to the medicines, preparations, matters, and things mentioned and described in Schedule B of this Act, manufactured, sold, or removed for sale, the several taxes or sums of money set down in words or figures against the same, respectively, or otherwise specified or set forth in Schedule B of this Act.

Medicinal preparations.

It is the duty of the person, firm, or corporation issuing the instrument to see that it is duly stamped. (Circular No. 503, revised; 9 Int. Rev. Rec., 163.)

Liability of party for whose use or benefit the instrument is issued. (Granby Mercantile Co. v. Webster, collector, 98 Fed. Rep., 604; vol. 3, Treas. Dec. (1900), Int. Rev., No. 3.)

SEC. 7. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document, or paper, as aforesaid, shall not be competent evidence in any court.

Penalty.

Unstamped documents not competent evidence.

When a party knows of the existence of the state of facts which make an instrument liable to a stamp, and yet believes that the instrument is not so liable in point of law, such ignorance of the law will not excuse him. With a full knowledge of all the facts before him, and of the consequences of a violation of the law, he assumes to construe the law and the instrument for himself, and, in case of misconstruction, he must abide the consequences. (United States v. Learned, 11 Int. Rev. Rec., 149; 1 Abb. U. S., 483; Fed. Cas., No. 15580.)

The omission of the words "with intent to evade the provisions of the law," or words of similar import, in section 7 was probably intentional. The fact that the fine is at the discretion of the court shows that it was the intention of Congress that the burden of proving by the Government that the act was done with intent to evade the law is dispensed with; and in case of hardship in a special case, it lies in the power of the court to make the penalty nominal.

Section 7 makes the making, signing, or issuing of documents, etc. (no question of intent involved), a misdemeanor with a fine on conviction not more than \$100. This covers all papers broadly.

Section 9 imposes a fine of not less than \$50 nor more than \$500 and imprisonment for not more than six months, or both, at the discretion of the court, upon any person who fraudulently makes use of an adhesive stamp without effectually canceling the same.

Section 10 makes the making, signing, issuing, or accepting and paying negotiable paper, *with intent to evade the act*, a misdemeanor, with fine on conviction up to \$200. This is limited to negotiable paper.

Section 11 makes the accepting any foreign bill of exchange, etc. (no question of intent involved), a misdemeanor, with a fine on conviction up to \$100. This applies only to negotiable paper.

Section 13 makes the registering, issuing, selling, or transferring any document, etc., in Schedule A, *with intent to evade the act*, a misdemeanor, with fine on conviction up to \$50, or six months' imprisonment, or both.

Counterfeiting
penalty.

SEC. 8. That if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument which shall have been provided, or may hereafter be provided, made, or used in pursuance of this Act, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression, or any part of the impression, of any such stamp, die, plate, or other instrument as aforesaid, upon any vellum, parchment, or paper, or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, or paper with any such forged or counterfeited stamp, die, plate, or other instrument, or part of any stamp, die, plate, or other instrument, as aforesaid, with intent to defraud the United States of any of the taxes hereby imposed, or any part thereof; or if any person shall utter, or sell, or expose for sale, any vellum, parchment, paper, article, or thing having thereupon the impression of any such counterfeited stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, or any such forged, counterfeited, or resembled impression, or part of impression, as aforesaid, knowing the same to be forged, counterfeited, or resembled; or if any person shall knowingly use or permit the use of any stamp, die, plate, or other instrument which shall have been so provided, made, or used as aforesaid, with intent to defraud the United States; or if any person shall fraudulently cut, tear, or remove, or cause or procure to be cut, torn, or removed, the impression of any stamp, die, plate, or other instrument which shall have been provided, made, or used in pursuance of this Act from any vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall fraudulently use, join, fix, or place, or cause to be

Stamp, die, or
plate and paper.

Selling forged
stamps, etc.

used, joined, fixed, or placed, to, with, or upon any vellum, parchment, paper, or any instrument or writing charged or chargeable with any of the taxes hereby imposed, any adhesive stamp, or the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of law, and which shall have been cut, torn, or removed from any other vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall willfully remove or cause to be removed, alter or cause to be altered, the canceling or defacing marks of any adhesive stamp with intent to use the same, or to cause the use of the same, after it shall have been once used, or shall knowingly or willfully sell or buy such washed or restored stamp, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same, or prepare the same with intent for the further use thereof; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, or writing, then, and in every such case, every person so offending, and every person knowingly and willfully aiding, abetting, or assisting in committing any such offenses as aforesaid shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall forfeit the said counterfeit stamps and the articles upon which they are placed, and shall be punished by fine not exceeding one thousand dollars, or by imprisonment and confinement at hard labor not exceeding five years, or both, at the discretion of the court.

Removing and reusing stamps.

Penalty.

SEC. 9. That in any and all cases where an adhesive stamp shall be used for denoting any tax imposed by this Act, except as hereinafter provided, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, so that the same may not again be used. And if any person shall fraudulently make use of an adhesive stamp to denote any tax imposed by this Act without so effectually canceling and obliterating such stamp, except as before mentioned, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than fifty nor more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court: *Provided*, That any proprietor or proprietors of proprietary articles, or articles subject to stamp duty under Schedule B of this Act, shall have the privilege of furnishing, without expense to the United States, in suitable form, to be approved by the Commissioner of Internal Revenue, his or their own dies or designs for stamps to be used thereon, to be retained in the possession of the Commissioner of Internal Revenue, for his or their separate use, which shall not be duplicated to any other person. And the proprietor furnishing such dies or designs shall be required to purchase stamps printed therefrom in quantities of not less than two thousand dollars

Cancellation of stamps.

Special dies and stamps.

Amount required to be purchased.

Cancellation.

face value at any one time. That in all cases where such stamp is used, instead of cancellation by initials and date, the said stamp shall be so affixed on the box, bottle, or package that in opening the same, or using the contents thereof, the said stamp shall be effectually destroyed; and in default thereof the party making default shall be liable to the same penalty imposed for neglect to affix said stamp as hereinbefore prescribed in this Act. Any person who shall fraudulently obtain or use any of the aforesaid stamps or designs therefor, and any person forging or counterfeiting, or causing or procuring the forging or counterfeiting, any representation, likeness, similitude, or colorable imitation of the said last-mentioned stamp, or any engraver or printer who shall sell or give away said stamps, or selling the same, or, being a merchant, broker, peddler, or person dealing, in whole or in part, in similar goods, wares, merchandise, manufactures, preparations, or articles, or those designed for similar objects or purposes, shall have knowingly or fraudulently in his, her, or their possession any such forged, counterfeited likeness, similitude, or colorable imitation of the said last-mentioned stamp, shall be deemed guilty of a crime, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or both.

Penalty.

Upon each adhesive documentary or proprietary stamp used or affixed after January 1, 1899, there shall, in addition to the initials of the person using the same and the year in which used, also appear the month and day of the month when such stamp was used or affixed. The month may be expressed by numeral—for instance, on a stamp used on January 12, 1899, the date may be written or stamped 1/12/99. (Int. Rev. Cir. No. 520, vol. 1, Treas. Dec. (1898), No. 20462.)

This cancellation may be done with a machine or punch which will affix the initials and date and so deface the stamp as to render it unfit for reuse. Stamps imprinted upon the face of checks, drafts, or other similar instruments may be canceled by dating and signing the check or draft and filling out the blank lines in writing across the face of the stamp in the usual manner of drawing checks and drafts. Stamps on checks and drafts may also be canceled by perforating through said stamp and the paper to which it is attached the amount, in figures, for which said check or draft is drawn.

Proprietary stamps printed from private dies, instead of cancellation by initials and date, shall be so affixed on the box, bottle, or package that in opening the same or in using the contents thereof the said stamp shall be effectually destroyed.

Stamps affixed to articles of foreign manufacture imported may be canceled by imprinting with a stencil or stamp, in addition to the initials and date, the name of the place of manufacture. Such name may extend across the stamp onto the wrapper or covering of the package. (Regulations, Series 7, No. 26, p. 30.)

The regulations made in pursuance of the statute provide for three methods of canceling documentary stamps of the denomination of 10 cents or any larger denomination by mutilation, as follows:

- (1) By cutting and canceling said stamps with a machine or punch which will affix the initials and date when attached.
- (2) By perforating through the stamp and paper to which it is attached the amount in figures for which said instrument was drawn.
- (3) By mutilating said stamps by cutting three parallel incisions lengthwise through the stamp, beginning not more than one-fourth of an inch from one end and extending to within one-

fourth of an inch of the other end, in addition to initials and date stamped or written thereon. (The required incisions may be made either before or after the stamp is affixed to an instrument.)

All documentary stamps of any denomination less than 10 cents, and all proprietary stamps, except private die stamps, should be canceled by writing or stamping thereon with ink the initials of the name of the person who affixed the same, and the date (day, month, and year) when affixed; or by cutting and canceling said stamp with a machine or punch which will affix the initials and date, as aforesaid.

Stamps imprinted on the face of checks or other instruments may be canceled by dating, signing, and filling out the instrument in the usual manner of drawing checks. Stamps on checks and drafts may also be canceled by perforating through the stamp and paper to which it is attached the amount in figures for which said check or draft was drawn.

These provisions have the force of law, and must be specifically followed without regard to the fact that other methods of cancellation may be deemed as effective. Neither the law nor the regulations can leave to the discretion of individuals the manner in which specific requirements shall be performed. (Vol. 2, Treas. Dec. (1899), No. 21855.)

SEC. 10. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, or shall accept or pay, or cause to be accepted or paid, with design to evade the payment of any stamp tax, any bill of exchange, draft, or order, or promissory note for the payment of money, liable to any of the taxes imposed by this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax hereby charged thereon, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, at the discretion of the court.

Persons issuing or accepting bill of exchange unstamped.

Penalty.

Definition of bills of exchange. (Cox v. National Bank, 100 U. S., 704.)

SEC. 11. That the acceptor or acceptors of any bill of exchange or order for the payment of any sum of money drawn, or purporting to be drawn, in any foreign country, but payable in the United States, shall, before paying or accepting the same, place thereupon a stamp, indicating the tax upon the same, as the law requires for inland bills of exchange or promissory notes; and no bill of exchange shall be paid or negotiated without such stamp; and if any person shall pay or negotiate, or offer in payment, or receive or take in payment, any such draft or order, the person or persons so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, in the discretion of the court.

Acceptor must stamp foreign bill of exchange.

Penalty.

SEC. 12. That in any collection district where, in the judgment of the Commissioner of Internal Revenue, the facilities for the procurement and distribution of adhesive stamps are or shall be insufficient, the Commissioner, as aforesaid, is authorized to furnish, supply, and deliver to the collector of any district, and to any assistant treasurer of the United States or designated depositary thereof, or any postmaster, a suitable quantity of adhesive stamps, without prepayment therefor, and may in advance require of any collector, assistant treasurer of the United States, or postmaster a bond, with sufficient sureties, to an amount

Stamps to be sold by whom.

equal to the value of the adhesive stamps which may be placed in his hands and remain unaccounted for, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. And it shall be the duty of such collector to supply his deputies with, or sell to other parties within his district who may make application therefor, adhesive stamps, upon the same terms allowed by law or under the regulations of the Commissioner of Internal Revenue, who is hereby authorized to make such other regulations, not inconsistent herewith, for the security of the United States and the better accommodation of the public, in relation to the matters hereinbefore mentioned, as he may judge necessary and expedient. And the Secretary of the Treasury may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all such adhesive stamps.

Regulated by
Secretary of
Treasury.

Any person
who registers, is-
sues, etc., any in-
struments, docu-
ments, etc., with-
out stamp.

Penalty.

Validating un-
stamped instru-
ments.

Penalty.

Remission of
penalty in case of
accident, mis-
take, etc.

SEC. 13. That any person or persons who shall register, issue, sell, or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of this Act, without the same being duly stamped, or having thereupon an adhesive stamp for denoting the tax chargeable thereon, and canceled in the manner required by law, with intent to evade the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court; and such instrument, document, or paper, not being stamped according to law, shall be deemed invalid and of no effect: *Provided*, That hereafter, in all cases where the party has not affixed to any instrument the stamp required by law thereon at the time of issuing, selling, or transferring the said bonds, debentures, or certificates of stock or of indebtedness, and he or they, or any party having an interest therein, shall be subsequently desirous of affixing such stamp to said instrument, or, if said instrument be lost, to a copy thereof, he or they shall appear before the collector of internal revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of ten dollars, and, where the whole amount of the tax denoted by the stamp required shall exceed the sum of fifty dollars, on payment also of interest, at the rate of six per centum, on said tax from the day on which such stamp ought to have been affixed, affix the proper stamp to such bond, debenture, certificate of stock or of indebtedness or copy, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made or issued: *And provided further*, That where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped, at the time of making or issuing the

same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamp, or to evade or delay the payment thereof, then and in such case, if such instrument, or, if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of internal revenue to be stamped, and the stamp tax chargeable thereon shall be paid, it shall be lawful for the said collector to remit the penalty aforesaid and to cause such instrument to be duly stamped. And when the original instrument, or a certified or duly proven copy thereof, as aforesaid, duly stamped so as to entitle the same to be recorded, shall be presented to the clerk, register, recorder, or other officer having charge of the original record, it shall be lawful for such officer, upon the payment of the fee legally chargeable for the recording thereof, to make a new record thereof, or to note upon the original record the fact that the error or omission in the stamping of said original instrument has been corrected pursuant to law; and the original instrument or such certified copy, or the record thereof, may be used in all courts and places in the same manner and with like effect as if the instrument had been originally stamped: *And provided further*, That in all cases where the party has not affixed the stamp required by law upon any such instrument issued, registered, sold, or transferred at a time when and at a place where no collection district was established, it shall be lawful for him or them, or any party having an interest therein, to affix the proper stamp thereto, or, if the original be lost, to a copy thereof. But no right acquired in good faith before the stamping of such instrument, or copy thereof, as herein provided, if such record be required by law, shall in any manner be affected by such stamping as aforesaid.

Recording.

Where no collection district is established, instrument may be stamped afterward.

See section 3422, p. 291.

Post stamping of instruments or documents of any description mentioned in Schedule A after the expiration of twelve months from date of issue. (Vol. 2, Treas. Dec. (1899), No. 21539.)

Where omission was accidental, the collectors have authority to remit penalty. (Vol. 1, Treas. Dec. (1899), No. 20590.)

Authority is conferred upon the collector, where an instrument was not stamped by accident, mistake, inadvertence, or urgent necessity, and without willful design to defraud, to remit the penalty and cause the instrument to be stamped. (Vol. 1, Treas. Dec. (1899), No. 20585.)

Instruments to be validated may be sent to collector by mail, with affidavit, instead of being personally brought to the collector's office. (Vol. 1, Treas. Dec. (1899), No. 20696.)

The first proviso is somewhat ambiguous. The words "selling, or transferring the said bonds, debentures, or certificates of stock or of indebtedness," were apparently interpolated in the text of the statute after the word "issuing," in the place of the words "the said instrument," as found in section 3422, Revised Statutes, without it being observed that they would tend to limit the operation of the provisos to this section to the particular instruments specified therein, notwithstanding the body of the statute deals with all instruments of whatever kind mentioned in Schedule A. It has been held that all instruments mentioned

in Schedule A are embraced in the provisos as it is not supposed that it was intended to limit their scope.

As to remission of penalty by collector after twelve months from date of instrument. (Vol. 2, Treas. Dec. (1899), No. 21539).

Instrument not
admissible as
evidence if un-
stamped.

Bondeisened in
foreign countries
to be stamped
when issued in
the United
States.

Not lawful to
record instru-
ments until
stamped.

Instrument not
invalid on ac-
count of absence
of particular de-
nomination of
stamp.

Exemption.

Co-operative
building and loan
association.

SEC. 14. That hereafter no instrument, paper, or document required by law to be stamped, which has been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded or admitted, or used as evidence in any court until a legal stamp or stamps, denoting the amount of tax, shall have been affixed thereto, as prescribed by law: *Provided*, That any bond, debenture, certificate of stock, or certificate of indebtedness issued in any foreign country shall pay the same tax as is required by law on similar instruments when issued, sold, or transferred in the United States; and the party to whom the same is issued, or by whom it is sold or transferred, shall, before selling or transferring the same, affix thereon the stamp or stamps indicating the tax required.

Subsequent stamping has no retroactive effect in imparting validity. (Vol. 3, Treas. Dec. (1900), Int. Rev. No. 53.)

SEC. 15. That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law; and the record, registry, or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed and canceled as aforesaid shall not be used in evidence.

Instruments requiring stamps are not competent evidence in courts unless stamped. (Vol. 1, Treas. Dec. (1899), No. 21074.)

Recorders of deeds should note upon their records the absence or presence of stamps on documents presented for record. (Vol. 1, Treas. Dec. (1899), No. 21226.)

SEC. 16. That no instrument, paper, or document required by law to be stamped shall be deemed or held invalid and of no effect for the want of a particular kind or description of stamp designated for and denoting the tax charged on any such instrument, paper, or document, provided a legal documentary stamp or stamps denoting a tax of equal amount shall have been duly affixed and used thereon.

SEC. 17. That all bonds, debentures, or certificates of indebtedness issued by the officers of the United States Government, or by the officers of any State, county, town, municipal corporation, or other corporation exercising the taxing power, shall be, and hereby are, exempt from the stamp taxes required by this Act: *Provided*, That it is the intent hereby to exempt from the stamp taxes imposed by this Act such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity: *Provided further*, That stock and bonds issued by co-operative building and loan associations whose capital stock does not exceed ten thousand dollars, and building and loan associations or companies that make loans only to their shareholders, shall be exempt from the tax herein provided.

Section 3420, Revised Statutes: All bank checks, drafts, or orders, as aforesaid, issued by the officers of the United States

Government, or by officers of any State, county, town, or other municipal corporation, are exempt from taxation: *Provided*, That it is the intent hereby to exempt from liability to taxation such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental and municipal capacity.

Writs and processes of State courts exempt from taxation; copies thereof are also exempt. (Vol. 2, Treas. Dec. (1898), No. 19971.)

Exemption from tax of building and loan associations. (Vol. 2, Treas. Dec. (1898), No. 20187.)

SEC. 18. That on and after the first day of July, eighteen hundred and ninety-eight, no telegraph company or its agent or employee shall transmit to any person any dispatch or message without an adhesive stamp, denoting the tax imposed by this Act, being affixed to a copy thereof, or having the same stamped thereupon, and in default thereof shall incur a penalty of ten dollars: *Provided*, That only one stamp shall be required on each dispatch or message, whether sent through one or more companies: *Provided*, That the messages or dispatches of the officers and employees of any telegraph or telephone company concerning the affairs and service of the company, and like messages or dispatches of the officials and employees of railroad companies sent over the wires on their respective railroads shall be exempt from this requirement: *Provided further*, That messages of officers and employees of the Government on official business shall be exempt from the taxes herein imposed upon telegraphic and telephonic messages.

Telegraph messages.

Penalty.

Exemption: Messages on company's business.

Dispatches on governmental business exempt.

It is the duty of the maker or signer of telegraph message offered for transmission to affix the stamp. (Kirk v. Western Union Telegraph Company, 90 Fed. Rep., 809; Vol. 1, Treas. Dec. (1899), No. 20602.)

SEC. 19. That all the provisions of this Act relating to dies, stamps, adhesive stamps, and stamp taxes shall extend to and include (except where manifestly inapplicable) all the articles or objects enumerated in Schedule B, subject to stamp taxes, and apply to the provisions in relation thereto.

Provision as to dies and stamps applicable to Schedule B.

SEC. 20. That on and after the first day of July, eighteen hundred and ninety-eight, any person, firm, company, or corporation that shall make, prepare, and sell, or remove for consumption or sale, drugs, medicines, preparations, compositions, articles, or things, including perfumery and cosmetics, upon which a tax is imposed by this Act, as provided for in Schedule B, without affixing thereto an adhesive stamp or label denoting the tax before mentioned shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court: *Provided*, That no stamp tax shall be imposed upon any uncompound medicinal drug or chemical, nor upon any medicine sold to or for the use of any person which may be mixed or compounded for said person according to the written recipe or prescription of any practicing physician or surgeon, or which may be put up or compounded for said person by a druggist or pharmacist.

Penalty, Schedule B.

Uncompounded medicinal drugs, etc., exempt.

Written recipe or prescription put up by druggist, etc., exempt.

Proprietary medicine, etc. macist selling at retail only. The stamp taxes provided for in Schedule B of this Act shall apply to all medicinal articles compounded by any formula, published or unpublished, which are put up in style or manner similar to that of patent, trade-mark, or proprietary medicine in general, or which are advertised on the package or otherwise as remedies or specifics for any ailment, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, use, or effect.

Decision of the United States District Court, Southern District of New York, relative to stamping of "uncompounded medicinal drugs or chemicals." *Aristol, phenacetin, euorphen, peperazine, protargol, losophen, lycetol, sulfonal, tannigen, tannopine, trional, and salophen* exempt from stamp tax by proviso in section 20 as uncompounded drugs. (United States v. *Aristol, Albert Stubbs, claimant*, 91 Fed. Rep., 608; Vol. 1, Treas. Dec. (1899), No. 20634.)

Removing stamps with intent to evade duties. SEC. 21. That any manufacturer or maker of any of the articles for sale mentioned in Schedule B, after the same shall have been so made, and the particulars hereinbefore required as to stamps have been complied with, or any other person who shall take off, remove, or detach, or cause, or permit, or suffer to be taken off, or removed or detached, any stamp, or who shall use any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover, with such stamp when first used, with the intent to evade the stamp duties, shall for every such article, respectively, in respect of which any such offense shall be committed, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court, and every such article or commodity as aforesaid shall also be forfeited.

Articles in Schedule B. Sending out, etc., before affixing stamps. SEC. 22. That any maker or manufacturer of any of the articles or commodities mentioned in Schedule B, as aforesaid, or any other person who shall sell, send out, remove, or deliver any article or commodity, manufactured as aforesaid, before the tax thereon shall have been fully paid by affixing thereon the proper stamp, as in this Act provided, or who shall hide or conceal, or cause to be hidden or concealed, or who shall remove or convey away, or deposit, or cause to be removed or conveyed away from or deposited in any place, any such article or commodity, to evade the tax chargeable thereon, or any part thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court, together with the forfeiture of any such article or commodity: *Provided*, That articles upon which stamp taxes are required by this Act may, when intended for exportation, be manufactured and sold or removed without having stamps affixed thereto, and without being charged with tax as aforesaid; and every manufacturer or maker of any article as aforesaid, intended for exportation, shall give such bonds and be subject to such rules and regula-

tions to protect the revenue against fraud as may be from time to time prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

SEC. 23. That every manufacturer or maker of any of the articles or commodities provided for in Schedule B, or his foreman, agent, or superintendent shall at the end of each and every month make, sign, and file with the collector of internal revenue for the district in which he resides a declaration in writing that no such article or commodity has, during such preceding month or time when the last declaration was made, been removed, or carried, or sent, or caused or suffered or known to have been removed, carried, or sent from the premises of such manufacturer or maker other than such as have been duly taken account of and charged with the stamp tax, on pain of such manufacturer or maker forfeiting for every refusal or neglect to make such declaration one hundred dollars; and if any such manufacturer or maker, or his foreman, agent, or superintendent, shall make any false or untrue declaration, such manufacturer or maker, or foreman, agent, or superintendent making the same shall be deemed guilty of a misdemeanor, and upon conviction shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

Declaration in writing to be filed with collector monthly.

False report.

Penalty.

SEC. 24. That the stamp taxes prescribed in this Act on the articles provided for in Schedule B shall attach to all such articles and things sold or removed for sale on and after the said first day of July, eighteen hundred and ninety-eight. Every person, except as otherwise provided in this Act, who offers or exposes for sale any article or thing provided for in said Schedule B, whether the article so offered or exposed is of foreign manufacture and imported or of domestic manufacture, shall be deemed the manufacturer thereof, and shall be subject to all the taxes, liabilities, and penalties imposed by law for the sale of articles without the use of the proper stamp denoting the tax paid thereon; and all such articles of foreign manufacture shall, in addition to the import duty imposed on the same, be subject to the stamp tax prescribed in this Act: *Provided further*, That internal revenue stamps required by existing law on imported merchandise shall be affixed thereto and canceled at the expense of the owner or importer before the withdrawal of such merchandise for consumption, and the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary for the affixing and canceling of such stamps, not inconsistent herewith.

Definition of manufacturer.

Stamps on imported merchandise.

SEC. 25. That the Commissioner of Internal Revenue shall cause to be prepared for the payment of the taxes prescribed in this Act suitable stamps denoting the tax on the document, article, or thing to which the same may be affixed, and he is authorized to prescribe such method for the cancellation of said stamps, as substitute for or in addition to the method provided in this Act, as he may deem expedient. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is author-

Stamps to be prepared.

See next paragraph for extension of time.

Discount.

ized to procure any of the stamps provided for in this Act by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on the first day of July, eighteen hundred and ninety-nine. That the adhesive stamps used in the payment of the tax levied in Schedules A and B of this Act shall be furnished for sale by the several collectors of internal-revenue, who shall sell and deliver them at their face value to all persons applying for the same, except officers or employees of the internal-revenue service: *Provided*, That such collectors may sell and deliver such stamps in quantities of not less than one hundred dollars of face value, with a discount of one per centum, except as otherwise provided in this Act. And he may, with the approval of the Secretary of the Treasury, make all needful rules and regulations for the proper enforcement of this Act.

See section 3424, Revised Statutes, p. 293.

[*Extract from sundry civil service appropriation act, approved March 3, 1899 (30 Stat., 1074.)*]

Stamps may be procured by contract.

Hereafter the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to procure any of the stamps provided for in the Act entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight, by contract, whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing; and said contracts shall be awarded under such terms, restrictions, and regulations as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Proposals for paper upon which to print United States internal-revenue stamps. (Circular No. 48, Int. Rev. No. 526, Mar. 27, 1899; vol. 1, Treas. Dec. (1899), No. 20945.)

Documentary and proprietary revenue stamps issued prior to June 13, 1898, under former revenue laws, can not be used for the payment of taxes required by existing law, and the redemption or exchange of such old stamps is prohibited by statute. (Vol. 2, Treas. Dec. (1898), Nos. 19608, 19732, and 19973.)

Ordinary postage stamps, except such as were printed with the letters "I. R." by the Bureau of Engraving and Printing, and furnished by this office to collectors for sale as documentary stamps, can not be used for the payment of any internal-revenue taxes.

Documentary and proprietary stamps can not be used interchangeably. Documentary stamps only must be used upon papers, documents, and instruments subject to tax as provided in Schedule A. Only proprietary stamps must be used upon articles and things enumerated in Schedule B.

Where a stamp of the proper denomination to pay the tax due on an article or document can not be procured, two or more stamps may be used. In such case as few stamps as possible should be attached, and each stamp used should be canceled in the manner provided by regulation. (Regulations, Series 7, No. 26, concerning documentary and proprietary stamps.)

A stamp affixed to an instrument and canceled cannot lawfully be removed therefrom and affixed to another instrument requiring a stamp. Amounts paid for stamps used in error, or in excess, or on instruments defaced or found to be defective

and for which a substitute is prepared and stamped, may be refunded. (Vol. 2, Treas. Dec. (1898), No. 20125.)

Persons desiring stamps imprinted on checks or other instruments must make application and payment therefor to a collector of internal revenue. (Vol. 1, Treas. Dec. (1899), No. 21170.)

The Commissioner of Internal Revenue is authorized, under certain conditions, to cause internal-revenue stamps for the payment of tax upon tobacco to be prepared elsewhere than in the Bureau of Engraving and Printing. (18 Op. Atty. Gen., 62.)

SCHEDULE A.

STAMP TAXES.

(1) Bonds, debentures, or certificates of indebtedness issued after the first day of July, anno Domini eighteen hundred and ninety-eight, by any association, company, or corporation, on each hundred dollars of face value or fraction thereof, five cents, and on each original issue, whether on organization or reorganization, of certificates of stock by any such association, company, or corporation, on each hundred dollars of face value or fraction thereof, five cents, and on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, on each hundred dollars of face value or fraction thereof, two cents: *Provided*, That in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamps shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. And any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale, or who shall in pursuance of any such sale deliver any such stock, or evidence of the sale of any such stock or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

Bonds, debentures, or certificates of indebtedness on each \$100, face value, etc., 5 cents.

On original issue of certificates of stock, 5 cents on each \$100.

On all sales, etc., on each \$100, 2 cents.

Transfers shown by books of company, stamps to be placed on such books.

Stamps to be placed on certificate.

Failure to stamp stock or memorandum.

Penalty.

When a bond is said to be issued. Whenever a corporation issues a bond, and there accrues to the corporation a benefit or consideration for issuing the same, the bond is subject to taxation. (Vol. 2, Treas. Dec. (1898), No. 20156.)

Stamp tax; certificates of stock; sales and transfers of certificates of stock. (Vol. 2, Treas. Dec. (1898), No. 19607.)

In reckoning the stamp tax on transfers of certificates of shares, the tax is reckoned on the face value. (Vol. 2, Treas. Dec. (1898), No. 19710.)

Transfers of shares or certificates of stock; how stamps are to be attached; stamp tax to be reckoned on face value of certificate. (Vol. 2, Treas. Dec. (1898), No. 19888.)

Transfers of stock from guardian to ward subject to taxation. (Vol. 2, Treas. Dec. (1898), No. 20070.)

Preferred stock issued in lieu of common stock not taxable when there is no change of ownership. (Vol. 1, Treas. Dec. (1899), No. 20694.)

Where brokers acting in behalf of their principals buy stock and receive stamped bills of sale in their own names, they may transfer such stock on the books of the corporation to the names of their principals without additional stamp tax. (Vol. 1, Treas. Dec. (1899), No. 20727.)

Certificates of stock of a foreign corporation when sold or delivered within the United States are liable to the same tax as certificates of stock of any domestic corporation. (Vol. 1, Treas. Dec. (1899), No. 20793.)

"Puts" and "calls." The Attorney-General decided that the former are not subject to tax, but that the latter, being agreements to sell, are taxable. (Vol. 1, Treas. Dec. (1899), No. 21151.)

When a certificate of stock is presented for transfer and the power of attorney on the back thereof is dated prior to July 1, 1898, although the name of the transferee is not filled in until after that date, both the power of attorney and the certificate are required to be stamped. (Vol. 1, Treas. Dec. (1899), No. 21277.)

No tax on the closing of a stock transaction caused by margin being exhausted because of market going against speculator. (Vol. 2, Treas. Dec. (1899), No. 21707.)

The circumstances under which the memoranda issued by brokers evidencing the sale or purchase of stock need or need not be stamped. (Vol. 2, Treas. Dec. (1899), No. 21711.)

Agreements of sale or to sell products at exchanges or boards of trade.

Stamps to be affixed on agreements, etc.

Memorandum.

(2) Upon each sale, agreement of sale, or agreement to sell, any products or merchandise at any exchange, or board of trade, or other similar place, either for present or future delivery, for each one hundred dollars in value of said sale or agreement of sale or agreement to sell, one cent, and for each additional one hundred dollars or fractional part thereof in excess of one hundred dollars, one cent: *Provided*, That on every sale or agreement of sale or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence

thereof as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

Failure to stamp memorandum.

Penalty.

The provision relative to sales, or agreements to sell, of products or merchandise at any exchange or board of trade, or other similar place, and requiring the seller to give a bill or memorandum which shall be stamped, declared constitutional.

Sales of live stock at stock yards come within the law, the same being a similar place to an exchange or board of trade.

The tax is not a direct tax, nor a tax upon the business itself which is so transacted, but is a duty upon the facilities made use of and actually employed in the transaction of the business, separate and apart from the business itself. (*Nicol v. Ames*, 173 U. S., 509; vol. 1, Treas. Dec. (1899), No. 20984.)

Transactions of live-stock exchanges—Duty of exchanges, when sale is made, or an agreement of sale, or an agreement to sell entered into, to give to buyer a bill, memorandum, or other evidence of such sale, and to place thereon the required stamp. (Vol. 2, Treas. Dec. (1898), No. 19739.)

Tax on sales "at any exchange, or board of trade, or other similar place;" live stock comes within the classification of "any products or merchandise;" "similar place" defined in reference to the selling of live stock; sales of live stock at such places as those defined subject to taxation. (Vol. 2, Treas. Dec. (1898), No. 20031.)

To constitute an exchange, board of trade, or other similar place, so as to subject the evidence of sale to tax, there must be more than one person, company, or partnership authorized to negotiate sales thereat. (Vol. 1, Treas. Dec. (1899), No. 21148.)

Bucket shops defined; tax on agreements to sell shares of stock or merchandise at such places. (Vol. 1, Treas. Dec. (1899), No. 21279.)

Sales of grain made at an exchange and sales of grain made by brokers in their own offices. (Vol. 2, Treas. Dec. (1899), No. 21396.)

(3) Bank check, draft, or certificate of deposit not drawing interest, or order for the payment of any sum of money, drawn upon or issued by any bank, trust company, or any person or persons, companies, or corporations at sight or on demand, two cents.

Bank checks, etc.

Orders for the payment of money are required to be stamped, although intended merely as receipts or vouchers. (*Granby Mercantile Co. v. Webster, Collector*, 98 Fed. Rep., 604; vol. 3, Treas. Dec. (1900), Int. Rev. No. 3.)

Orders drawn under a State law for the payment of money out of the State funds, and bank checks issued by the treasurer of the State for such payments, are exempt. (Vol. 1, Treas. Dec. (1898), No. 19523.)

Official checks of disbursing officers of the Indian service, drawn by them against public funds, in discharge of duties imposed by law, are exempt. (Vol. 2, Treas. Dec. (1898), No. 19683.)

Checks of officers of a county or municipal corporation, drawn in their official capacity in discharge of duties imposed upon them by law, are exempt from tax. (Vol. 2, Treas. Dec. (1898), No. 19693.)

No stamp required for the withdrawal of money from savings banks by depositors on pass books. (Vol. 2, Treas. Dec. (1898), No. 19611.)

Any check or order for payment of money drawn on any person requires a 2-cent stamp. (Vol. 2, Treas. Dec. (1898), No. 19654.)

Cotton tickets O. K.'d by a buyer, and paid with buyer's money in hands of third party, direct to the original payee exempt from taxation. (Vol. 2, Treas. Dec. (1898), No. 20375.)

Checks used in lieu of promissory notes must be stamped at the rate of 2 cents per \$100. (Vol. 2, Treas. Dec. (1898), No. 20463.)

Checks and orders for the payment of money (inland and foreign) defined and tax designated. Letters of advice used by foreign money brokers, when taxable. (Vol. 1, Treas. Dec. (1899), No. 20648.)

Instruments used by foreign money-order brokers, when and how taxable. (Vol. 1, Treas. Dec. (1899), No. 20650.)

Statement to the effect that drafts do not become subject to taxation unless paid, wholly erroneous. (Vol. 1, Treas. Dec. (1899), No. 20871.)

Orders for the payment of money contained in acceptances of drafts require but one stamp of 2 cents, whether the drafts are at sight or on time. (Vol. 1, Treas. Dec. (1899), No. 20874.)

Bills of exchange or orders for payment of money drawn abroad, but payable in the United States *at sight or on demand*, require only a 2-cent stamp on each instrument. Reversal of ruling published as Treasury decision 20881 in this respect. (Vol. 1, Treas. Dec. (1899), No. 20947.)

Tax on checks, drafts, or orders for the payment of money, domestic and foreign, and definition of such instruments. (Vol. 1, Treas. Dec. (1899), No. 21021.)

Orders for payment of money by officers of lodges or beneficiary societies. Modification of ruling 58 in circular 503, revised. (Vol. 1, Treas. Dec. (1899), No. 21077.)

Banks must not affix stamps to unstamped checks presented, and must return to drawer any unstamped check presented for payment. Contrary instruction contained in Treasury decision 19606 revoked. (Vol. 2, Treas. Dec. (1899), No. 21395.)

Grain and cotton tickets cashed by a regular employee of company issuing same, or from buyer's own money in hands of third parties, not taxable if paid direct to original payee. (Vol. 2, Treas. Dec. (1899), No. 21708.)

Bill of exchange (inland) and promissory note.

(4.) Bill of exchange (inland), draft, certificate of deposit drawing interest, or order for the payment of any sum of money, otherwise than at sight or on demand, or any promissory note except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding one hundred dollars, two cents; and for each additional one hundred dollars or fractional part thereof in excess of one hundred dollars, two cents. And from and after the first day of July, eighteen hundred and ninety-eight, the provisions of this paragraph shall apply as well to original domestic money orders issued by the Government of the United States, and the price of such money orders shall be increased by a sum equal to the value of the stamps herein provided for.

Certificates of deposit to secure the payment of gas bills taxable as certificates of deposit drawing interest. (Vol. 2, Treas. Dec. (1898), No. 20003.)

Certificates of deposit payable on demand and bearing interest if left for specified time require a 2 cent stamp when issued, and if paid subsequent to time interest accrues, additional stamps at rate of 2 cents per \$100. (Vol. 2, Treas. Dec. (1898), No. 20420.)

Renewal of note does not of itself renew the pledge securing it; pledge must be specifically renewed to subject it to taxation. (Vol. 2, Treas. Dec. (1898), No. 20118.)

Bill of exchange (foreign).

(5.) Bill of exchange (foreign) or letter of credit (including orders by telegraph or otherwise for the payment of money issued by express or other companies or any person or persons), drawn in but payable out of the United States, if

drawn singly or otherwise than in a set of three or more, according to the custom of merchants and bankers, shall pay for a sum not exceeding one hundred dollars, four cents, and for each one hundred dollars or fractional part thereof in excess of one hundred dollars, four cents.

If drawn in sets of two or more: For every bill of each set, where the sum made payable shall not exceed one hundred dollars, or the equivalent thereof, in any foreign currency in which such bill may be expressed, according to the standard of value fixed by the United States, two cents; and for each one hundred dollars or fractional part thereof in excess of one hundred dollars, two cents.

Where drawn in sets of two or more.

(6) Bills of lading or receipt (other than charter party) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, ten cents.

Bill of lading (export).

See exception at the end of Schedule A.

Only one stamp required upon bills of lading issued in sets of two or more covering but one shipment. Treasury decision 21169 modified. (Vol. 2, Treas. Dec. (1899), No. 21496.)

Relative to export bills of lading subject to stamp tax. (Circular No. 109, Int. Rev. No. 544, Aug. 24, 1899; vol. 2, Treas. Dec. (1899), No. 21538.)

Opinion of the Attorney-General, January 2, 1900, on the question of the taxability of export bills of lading, or receipts issued for goods shipped from the United States to Canada or Mexico by rail; such instruments taxable at the rate of one cent only. (Vol. 3, Treas. Dec. (1900), No. 6.)

(7) **EXPRESS AND FREIGHT:** It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and there shall be duly attached and canceled, as is in this Act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent: *Provided*, That but one bill of lading shall be required on bundles or packages of newspapers when inclosed in one general bundle at the time of shipment. Any failure to issue such bill of lading, manifest, or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company, or corporation or person to a penalty of fifty dollars for each offense, and no such bill of lading, manifest, or other memorandum shall be used in evidence unless it shall be duly stamped as aforesaid.

Express and freight.

Each duplicate bill of lading, etc.

Newspaper bundles.

Failure to issue

Penalty.

United States v. Wells, Fargo & Co. Express (96 Fed. Rep., 835).

Crawford v. Hubbell (89 Fed. Rep., 961).

The common carrier shall issue bills of lading, manifest, or other evidence of receipt and forwarding. "*Shipment*" defined: On a through bill of lading it is one shipment, though several modes of conveyance are employed. Every separate shipment requires evidence that it has been made, and to the evidence the stamp is affixed. (Vol. 2, Treas. Dec. (1898), No. 19829.)

Opinion of the Attorney-General, August 17, 1898, on the question whether the word "goods" includes money: Where an express company receives money for transportation, it is regarded as "goods" under Schedule A, and a bill of lading must be issued therefor, and a stamp affixed. (Vol. 2, Treas. Dec. (1898), No. 19970.)

Receipts, bills of lading, or manifests issued by express companies in cases of shipment of money and securities of the United States Government under contract for transportation of same are subject to stamp tax under act of 1898. (Vol. 2, Treas. Dec. (1898), No. 19996.)

The Attorney-General holds that the law which makes it the duty of the carrier to issue a bill of lading or a receipt to a person from whom any goods are accepted for transportation, and to stamp the same, does not apply to baggage received by railroad companies and carried upon the same train with the owner, whether such baggage be the quantity allowed ordinarily by the rules of the railroad company or is in excess of such amount. (Vol. 2, Treas. Dec. (1898), No. 20169.)

Exemption from tax of express matter carried for railroad company free under contract with express company. (Vol. 2, Treas. Dec. (1898), No. 20240.)

Bill of lading covering both domestic and foreign transportation alone requires a 10-cent revenue stamp, but if it only covers the domestic transportation, a 1-cent stamp; i. e., only one revenue stamp is now required, either a 10-cent or a 1-cent stamp. (Vol. 1, Treas. Dec. (1899), No. 20834.)

No obligation imposed on transportation companies to issue export bills of lading, but when such bills are issued they must be stamped. (Vol. 1, Treas. Dec. (1899), No. 21169.)

Bills of lading issued by steamboats or other vessels plying only between ports of the United States and ports in British North America do not require stamps. (Vol. 1, Treas. Dec. (1899), No. 21255.)

Tax imposed on bills of lading covering shipments from a port or place within the United States to any foreign port or place. (Vol. 2, Treas. Dec. (1899), No. 21453.)

Carriers not required by law to issue *duplicates* of domestic bills of lading, but if they do issue them they must stamp them with a 1-cent stamp. (Vol. 2, Treas. Dec. (1899), No. 21645.)

Memorandum receipts for freight, afterwards exchanged for bills of lading, must be stamped when issued. (Vol. 2, Treas. Dec. (1899), No. 21688.)

Concerning the business of local expressmen and common carriers. (Vol. 2, Treas. Dec. (1899), No. 21692.)

The stamp tax on bills of lading is payable by the transportation company issuing the bill of lading, and the payment by a disbursing officer of such tax on shipments made by the Government is unauthorized. (VI Comp. Dec., 72.)

Telephone messages.

(8) Telephone messages: It shall be the duty of every person, firm, or corporation owning or operating any telephone line or lines to make within the first fifteen days of each month a sworn statement to the collector of internal revenue in each of their respective districts, stating the number of messages or conversations transmitted over their respective lines during the preceding month for which a charge of fifteen cents or more was imposed, and for each of such messages or conversations the said person, firm, or corporation shall pay a tax of one cent: *Provided*, That only one payment of said tax shall be required, notwithstanding the lines of one or more persons, firms, or corporations shall be used for the transmission of each of said messages or conversations.

Exemptions, see sec. 18, p. 307.

Telephone messages and conversations. The person, firm, or corporation starting the message or conversation on its course should make return on Form 424. (Vol. 1, Treas. Dec. (1899), No. 20983.)

(9) Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, fifty cents.

Bonds.

Bonds of municipal officers required to be stamped. (Vol. 2, Treas. Dec. (1898), No. 19686.)

Tax on renewal of bonds of fidelity companies taking effect on or after July 1, 1898. (Vol. 2, Treas. Dec. (1898), No. 19845.)

Tax on bonds required before a person can enter on the duties of a State office not a tax on the functions of a State government. (Vol. 1, Treas. Dec. (1899), No. 20510.)

Bonds of notaries public are subject to a tax. (Vol. 1, Treas. Dec. (1899), No. 20547.)

Dramshop bonds. (United States v. Ambrosini, vol. 3, Treas. Dec. (1900), Int. Rev. No. 40.)

Bonds required in legal proceedings. Bonds of administrators, executors, guardians, and receivers appointed by the courts not taxable. (Vol. 1, Treas. Dec. (1899), No. 20756.)

Opinion of the Attorney-General that bonds given by private individuals secured by mortgages are taxable as bonds of any description not otherwise provided for, and not as promissory notes. (Vol. 1, Treas. Dec. (1899), No. 20788.)

Bonds given under section 3297, Revised Statutes, by officers of State institutions, for alcohol to be used for scientific purposes, not subject to stamp tax. (Vol. 1, Treas. Dec. (1899), No. 20876.)

Stamps required on bonds of distillers, brewers, and other manufacturers, when given in duplicate or triplicate, only the original to be stamped. Modification of Treasury ruling No. 19707, of July 18, 1898. (Vol. 1, Treas. Dec. (1899), No. 21312.)

Guaranties accompanying proposals taxable the same as bonds. (Vol. 2, Treas. Dec. (1899), No. 21609.)

Bonds of indemnity, and fidelity and guaranty insurance. (Vol. 3, Treas. Dec. (1900), Int. Rev. No. 15.)

(10) Certificate of profits, or any certificate or memorandum showing an interest in the property or accumulations of any association, company, or corporation, and on all transfers thereof, on each one hundred dollars of face value or fraction thereof, two cents.

Certificate of profits, etc.

(11) Certificate: Any certificate of damage, or otherwise, and all other certificates or documents issued by any port warden, marine surveyor, or other person acting as such, twenty-five cents.

Certificate of damage.

(12) Certificate of any description required by law not otherwise specified in this Act, ten cents.

Certificate of any description.

Certificates of acknowledgment to deeds and mortgages not required to be stamped. (Vol. 2, Treas. Dec. (1898), No. 19764.)

See numerous rulings in Circular 503, revised, on the subject of Certificates required by law.

(13) Charter party: Contract or agreement for the charter of any ship, or vessel, or steamer, or any letter, memorandum, or other writing between the captain, master, or owner, or person acting as agent of any ship, or vessel, or steamer, and any other person or persons, for or relating to the charter of such ship, or vessel, or steamer, or any renewal or transfer thereof, if the registered tonnage of such ship, or vessel, or steamer does not exceed three hundred tons, three dollars.

Charter party.

Exceeding three hundred tons and not exceeding six hundred tons, five dollars.

Exceeding six hundred tons, ten dollars.

Barges not included in the term "vessel," in paragraph relating to charter party. (Vol. 2, Treas. Dec. (1898), No. 19653.)

The tax imposed on charter parties is applicable only to registered tonnage in foreign trade, and does not apply to enrolled or licensed tonnage. (Opinion of the Attorney-General. Vol. 2, Treas. Dec. (1898), No. 19823.)

The copy or duplicate of a foreign-made charter party, chartering a vessel to load at a port within the United States, which is the original evidence in this country of the vessel's charter and the evidence accepted by all concerned, is subject to taxation. (Vol. 2, Treas. Dec. (1899), No. 21419.)

Contract:
Broker's note,
etc.

(14) Contract: Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, not otherwise provided for in this Act, ten cents.

Deeds, etc.

(15) Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, fifty cents.

Referee's deed. Decision of New York supreme court. (Loring v. Chase, vol. 1, Treas. Dec. (1899), No. 20794.)

A conveyance of realty by a master commissioner must have necessary stamps to be receivable for record. (Farmers' Loan and Trust Co. v. Council Bluffs Gas and Electric Light Co. (1898), 90 Fed. Rep., 806; Vol. 1, Treas. Dec. (1899), No. 20952.)

Taxation of conveyances of realty sold subject to mortgage. Decision of Judge Taft in United States circuit court for southern district of Ohio considered. (Vol. 1, Treas. Dec. (1899), No. 21314.)

Escrow deeds are not subject to taxation until final delivery. (Vol. 2, Treas. Dec. (1898), No. 20096.)

A contract for deed used in selling real estate is not subject to stamp tax. (Vol. 2, Treas. Dec. (1898), No. 20065.)

Releases of mortgages and deeds of trust operating as mortgages are not subject to taxation, no matter in what form they are executed. (Vol. 2, Treas. Dec. (1898), No. 20440.)

Deeds of masters in chancery are required to be stamped. (Vol. 2, Treas. Dec. (1898), No. 20311.)

Warranty deed with vendor's lien taxed as a conveyance of land. No mortgage tax imposed thereon. (Vol. 2, Treas. Dec. (1898), No. 20320.)

When a partition deed is operative in defining boundary lines or in showing by location each tenant in common's interest, no tax accrues. (Vol. 1, Treas. Dec. (1899), No. 20792.)

A deed or mortgage executed and delivered prior to July 1, 1898, is subject to stamp tax when offered for registration after that date in States where, by State law, registration is necessary to pass title or establish valid lien. (Vol. 1, Treas. Dec. (1899), No. 20838.)

Conveyance of a mine located on unpatented land is subject to taxation. (Vol. 1, Treas. Dec. (1899), No. 20986.)

Decision construing the clause in Schedule A relative to stamps on conveyances. U. S. Circuit Court, Western District of Missouri. (Vol. 3, Treas. Dec. (1900), Int. Rev. No. 51.)

Deeds of conveyance executed by and between tenants in common not taxable. Deeds of conveyance executed by and between joint tenants taxable. (Vol. 1, Treas. Dec. (1899), No. 21283.)

Method of computing taxation on real property subject to mortgage. Modifying Treas. Dec. 19932. (Vol. 2, Treas. Dec. (1899), No. 21519.)

Conveyance of realty to trustees or other persons without a valuable consideration, not taxable. (Vol. 3, Treas. Dec. (1900) Int. Rev. No. 52; Circular 555, March 9, 1900.)

A deed of conveyance conveying real estate that lies in countries that are not United States territory is not subject to taxation, though the grantor and grantee may both be citizens and residents of the United States. (Vol. 2, Treas. Dec. (1899), No. 21562.)

Deeds that are simply confirmatory and do not vest title not already vested are exempt from tax; same as to deeds of partition. (Circular No. 503, 2d revision. Compilation of decisions for year 1899, p. 293.)

Taxation of conveyances of real property where a mortgage is given to the grantor by the grantee at the time of conveyance for part of the purchase price. (Vol. 2, Treas. Dec. (1899), No. 21621.)

(16) Dispatch, telegraphic: Any dispatch or message, Telegrams.
one cent.

(17) Entry of any goods, wares, or merchandise at any Entry of goods,
etc., at custom-
house.
custom-house, either for consumption or warehousing, not exceeding one hundred dollars in value, twenty-five cents.

Exceeding one hundred dollars and not exceeding five hundred dollars in value, fifty cents.

Exceeding five hundred dollars in value, one dollar.

(18) Entry for the withdrawal of any goods or merchandise from customs bonded warehouse, fifty cents. Entry for with-
drawal.

(19) Insurance (life): Policy of insurance, or other instru- Life insurance.

ment, by whatever name the same shall be called, whereby any insurance shall hereafter be made upon any life or lives, for each one hundred dollars or fractional part thereof, eight cents on the amount insured: *Provided*, That on all policies, for life insurance only, issued on the industrial or Insurance on
industrial or
weekly payment
plan.
weekly-payment plan of insurance, the tax shall be forty per centum of the amount of the first weekly premium.

And it shall be the duty of each person, firm, or corporation issuing such policies to make within the first fifteen days of every month a sworn statement to the collector of internal revenue in each of their respective districts, of the total amount of first weekly premiums received on such policies issued by the said person, firm, or corporation during the preceding month, and upon the total amount so received, the said person, firm, or corporation shall pay the said tax of forty per centum: *Provided further*, That the provisions of this section shall not apply to any fraternal, beneficiary society, or order, or farmers' purely local cooperative company or association, or employees' relief associations operated on the lodge system, or local cooperation plan, organized and conducted solely by the members thereof for the exclusive benefit of its members and not for profit.

Exemption.

A policy of insurance is not valid unless it bears the proper canceled revenue stamp. Stamps may be affixed by local agents when policies are delivered. (Vol. 2, Treas. Dec. (1898), No. 19741.)

Circumstances under which policies of life insurance issued in lieu of canceled policies, surrendered for change in class of insurance and amount of insurance, are not taxable. (Vol. 1, Treas. Dec. (1899), No. 21048.)

Several conditions under which a policy of life insurance, issued in lieu of a surrendered policy, is not subject to taxation. Instructions in regard to indorsing the new policy to show why stamps are not affixed. Change of beneficiaries without consideration not taxable; when made for a valuable consideration, taxable as assignments. (Vol. 1, Treas. Dec. (1899); No. 21227.)

Annuities payable either during life or a term of years not taxable under Schedule A. (Vol. 2, Treas. Dec. (1899), No. 21618.)

Exemption—Classes of life insurance companies where policies are exempt if the companies are not conducted for profit. (Vol. 2, Treas. Dec. (1899), No. 21779.)

Marine, inland
fire insurance.

(20) Insurance (marine, inland, fire,): Each policy of insurance or other instrument, by whatever name the same shall be called, by which insurance shall be made or renewed upon property of any description (including rents or profits), whether against peril by sea or on inland waters, or by fire or lightning, or other peril, made by any person, association, or corporation, upon the amount of premium charged, one-half of one cent on each dollar or fractional part thereof: *Provided*, That purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property and not for profit shall be exempted from the tax herein provided.

Exemption.

Tax on insurance policies issued by foreign insurance companies having agencies in the United States. (Vol. 2, Treas. Dec. (1898), No. 20034.)

Fire insurance policy, when assigned or transferred, taxed in proportion to the unearned premium. (Vol. 2, Treas. Dec. (1898), No. 20068.)

Policies of insurance (marine) issued by foreign companies having no established agencies in the United States are nevertheless subject to the stamp tax when obtained by or through insurance brokers residing in this country. (Vol. 2, Treas. Dec. (1898), No. 20259.)

Insurance
(casualty, fidelity,
and guarantee). Accident,
fidelity, employers'
liability, plate glass, steam
boiler, burglary,
elevator, automatic
sprinkler, or other branch
of insurance
(except, etc.).

(21) Insurance (casualty, fidelity, and guarantee): Each policy of insurance, or bond or obligation of the nature of indemnity for loss, damage, or liability issued, or executed, or renewed by any person, association, company, or corporation, transacting the business of accident, fidelity, employer's liability, plate glass, steam boiler, burglary, elevator, automatic sprinkler, or other branch of insurance (except life, marine, inland, and fire insurance), and each bond, undertaking, or recognizance, conditioned for the performance of the duties of any office or position, or for the doing or not doing of anything therein specified, or other obligation of the nature of indemnity, and each contract or obligation guaranteeing the validity or legality of bonds or other obligations issued by any State, county, municipal, or other public body or organization, or guaranteeing titles to real estate or mercantile credits executed or guaranteed by any fidelity, guarantee, or surety company upon the amount of premium charged, one-half of one cent on each dollar or fractional part thereof.

Rate.

Policies of insurance or renewal receipts not subject to taxation until issued; issue defined. Taxation based on premium

regardless of its payment in installments. The policy must have the stamp affixed to it; the application must not be stamped. (Vol. 2, Treas. Dec. (1898), No. 20027.)

Stamp tax on reinsurance policies; opinion of Attorney-General. Feb. 3, 1899. No tax accrues on a contract between life insurance companies for reinsurance upon any life or lives. (Vol. 1, Treas. Dec. (1899), No. 20677.)

Change of beneficiaries in life insurance policies; when taxable. (Vol. 1, Treas. Dec. (1899), No. 20726.)

Guaranty and fidelity insurance policies. When the policies should be stamped as policies of insurance and not as bonds. (Vol. 1, Treas. Dec. (1899), No. 20781.)

Opinion of the Attorney-General on reinsurance policies. March 2, 1899. No tax accrues on a contract between life, fire, and marine insurance companies for reinsurance. (Vol. 1, Treas. Dec. (1899), No. 20789.)

When policies of reinsurance of fire-insurance policies are written in the United States and the policy which is reinsured is not subject to taxation by reason of being issued in a foreign country, the reinsurance policy should be stamped. (Vol. 1, Treas. Dec. (1899), No. 21229.)

Policies of accident insurance, whereon the premiums are payable in installments, should be stamped, when issued, on a basis of the full premium charged for the whole term. The policy can not be stamped on a basis of the first premium paid and the application stamped as succeeding premiums are paid. (Vol. 2, Treas. Dec. (1899), No. 21646.)

Bonds of indemnity, and fidelity and guaranty insurance (Vol. 3, Treas. Dec. (1900), Int. Rev. No. 15.)

(22) Lease, agreement, memorandum, or contract for the hire, use, or rent of any land, tenement, or portion thereof— Leases.

If for a period of time not exceeding one year, twenty-five cents.

If for a period of time exceeding one year and not exceeding three years, fifty cents.

If for a period exceeding three years, one dollar.

Receipts setting forth terms of a lease required to be stamped as a lease, unless there has been a separate lease made which has been duly stamped. (Vol. 2, Treas. Dec. (1898), No. 19684.)

Transfer of lease subject to taxation for the unexpired term. (Vol. 2, Treas. Dec. (1898), No. 20069.)

When an interest in a lease is assigned, the assignment is subject to taxation. The rate is a proportional one, and based on the rate that would accrue were the lease, instead of an interest in the same, assigned. (Vol. 1, Treas. Dec. (1899), No. 20915.)

(23) Manifest for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port— Manifest for custom-house entry, etc.

If the registered tonnage of such ship, vessel, or steamer does not exceed three hundred tons, one dollar.

Exceeding three hundred tons, and not exceeding six hundred tons, three dollars.

Exceeding six hundred tons, five dollars.

(24) Mortgage or pledge, of lands, estate, or property, real or personal, heritable, or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money, lent at the time or previously due and owing or forborne to be paid, being payable; Mortgage or pledge, real or personal property.

also any conveyance of any lands, estate, or property whatsoever, in trust to be sold or otherwise converted into money, which shall be intended only as security, either by express stipulation or otherwise; on any of the foregoing

Rate of tax.

Assignment of
transfer of mort-
gage, lease, pol-
icy of insurance
or renewal of con-
tract, etc.

exceeding one thousand dollars and not exceeding one thousand five hundred dollars, twenty-five cents; and on each five hundred dollars or fractional part thereof in excess of fifteen hundred dollars, twenty-five cents: *Provided*, That upon each and every assignment or transfer of a mortgage, lease, or policy of insurance, or the renewal or continuance of any agreement, contract, or charter, by letter or otherwise, a stamp duty shall be required and paid at the same rate as that imposed on the original instrument.

Joint Resolution to amend section twenty-five of the Act passed June thirteenth, eighteen hundred and ninety-eight, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes." Approved, February 28, 1899. (30 Stat., 1890.)

One stamp re-
quired.
Tax shall be
highest rate.

That an Act passed June thirteenth, eighteen hundred and ninety-eight, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," be amended by adding to the end of Schedule A, section twenty-five, the following: "Whenever any bond or note shall be secured by a mortgage, or deed of trust, but one stamp shall be required to be placed upon such papers: Provided, That the stamp tax placed thereon shall be the highest rate required for said instruments, or either of them."

Stamp tax; bonds and mortgages. Act of February 28, 1899, not retroactive. (Vol. 1, Treas. Dec. (1899), No. 20981.)

Opinion of the Attorney-General, July 17, 1899, relative to the stamping of bonds secured by mortgages or deeds of trust issued by corporations under act of June 13, 1898, as amended by act of February 28, 1899, and ruling of the Commissioner of Internal Revenue thereunder. Case of B. & O. R. Co. Under this opinion it is permissible to affix the necessary stamps either to the mortgage or to the bonds, as parties may elect. (Vol. 2, Treas. Dec. (1899), No. 21400.)

Where a mortgage or deed of trust secures more than one bond or note the total tax accruing on all the bonds or notes should be compared with the tax accruing on the mortgage or deed of trust, and the stamp representing the highest tax may be affixed to either the bonds or the notes, as the parties may elect. (Vol. 2, Treas. Dec. (1899), No. 21471.)

Collateral securities pledged for loans. When certificates of stock or other securities are pledged for a loan, the stamp tax is to be reckoned, not on the face value of the certificates (or securities), but on the amount of money loaned (above \$1,000). (Vol. 2, Treas. Dec. (1898), No. 19736.)

Pledge of insurance policy to secure loan not taxable if the amount secured is less than \$1,000. If loan exceeds \$1,000 it is taxable as a pledge of personal property. Pledge of insurance policy not such an assignment as requires a stamp at the same rate as imposed on the original instrument. (Vol. 2, Treas. Dec. (1898), No. 19841.)

Pledging of collateral securities and instruments. (Op. Atty. Gen., Sept. 21, 1898; Vol. 2, Treas. Dec. (1898), No. 20193.)

Releases of mortgages and of deeds of trust operating as mortgages are not subject to taxation, no matter in what form they are executed. (Vol. 2, Treas. Dec. (1898), No. 20440.)

Stamping of a note secured by a pledge of collateral under amendment approved February 28, 1899, to the act of June 13, 1898. (Vol. 1, Treas. Dec. (1899), No. 20949.)

Stamp tax; pledge of collateral. Collateral deposited as security for a credit for \$10,000 on open account is subject to taxation as a pledge, and but one tax on the original pledge, no matter how many times the loan is made and paid. (Vol. 1, Treas. Dec. (1899), No. 21044.)

Agricultural liens and chattel mortgages conveying crops to secure supplies taxable. (Vol. 1, Treas. Dec. (1899), No. 21076.)

The conveyance used under the statutes of the State of Georgia in cases where the payment of a debt is secured by pledging of real estate is taxable under the paragraph in Schedule A relating to mortgage or pledge. The "bond to reconvey" is subject to a tax of 50 cents. (Vol. 2, Treas. Dec. (1899), No. 21667.)

- (25) Passage ticket, by any vessel from a port in the United States to a foreign port, if costing not exceeding thirty dollars, one dollar. Passage ticket from a port in United States to a foreign port.

Costing more than thirty and not exceeding sixty dollars, three dollars.

Costing more than sixty dollars, five dollars.

Revocation of ruling that tickets issued in Canada for passage on a vessel sailing from a United States port are not subject to stamp tax. (Vol. 2, Treas. Dec. (1898), No. 20004.)

Members of foreign diplomatic corps are not required to pay tax on passage tickets by vessel from a port in the United States to a foreign port. (Vol. 2, Treas. Dec. (1898), No. 20196.)

- (26) Power of attorney or proxy for voting at any election for officers of any incorporated company or association, except religious, charitable, or literary societies, or public cemeteries, ten cents. Power of attorney or proxy for voting.

- (27) Power of attorney to sell and convey real estate, or to rent or lease the same, to receive or collect rent, to sell or transfer any stock, bonds, scrip, or for the collection of any dividends or interest thereon, or to perform any and all other acts not hereinbefore specified, twenty-five cents: *Provided*, That no stamps shall be required upon any papers necessary to be used for the collection of claims from the United States for pensions, back pay, bounty, or for property lost in the military or naval service. Power of attorney.

Exemption.

An instrument authorizing the secretary to transfer stock on the books of the company held not to be taxable as a power of attorney. (Vol. 2, Treas. Dec. (1899), No. 21467.)

An instrument appointing an attorney in fact to transfer stock on the books of the company requires to be stamped as a power of attorney, but an instrument authorizing the secretary to make the transfer is held not to be a power of attorney. (Vol. 2, Treas. Dec. (1899), No. 21563.)

- (28) Protest: Upon the protest of every note, bill of exchange, acceptance, check or draft, or any marine protest, whether protested by a notary public or by any other officer who may be authorized by the law of any State or States to make such protest, twenty-five cents. Protest.

- (29) Warehouse receipt for any goods, merchandise, or property of any kind held on storage in any public or private warehouse or yard, except receipts for agricultural products deposited by the actual grower thereof in the regular course of trade for sale, twenty-five cents: *Provided*, That the stamp duties imposed by the foregoing schedule on manifests, bills of lading, and passage tickets shall not apply to steamboats or other vessels plying between ports of the United States and ports in British North America. Warehouse receipt.

Exemption on manifest, bill of lading, etc.

Warehouse receipts for perishable goods. Definition of warehouse. A receipt for storage of fresh meats, vegetables, etc., for home-market consumption, from day to day and in small quantities, not a "warehouse receipt," and not subject to stamp tax. (Vol. 2, Treas. Dec. (1898), No. 19737.)

Every separate consignment requires stamp tax. Such consignment may occupy several days in delivery. Stamp to be affixed to the evidence of storage or delivery. (Vol. 2, Treas. Dec. (1898), No. 19840.)

Opinion of the Attorney-General on the question of the proper construction to be put upon the clause relative to stamps upon warehouse receipts. (Vol. 1, Treas. Dec. (1899), No. 20484.)

The elements necessary to constitute a taxable warehouse receipt:

The written instrument should have at least four elements embodied in it. First, the fact must appear that goods, merchandise, or property are being dealt with. Second, that they are being dealt with in regard to storage, directly or indirectly. Third, there must appear some acknowledgment or receipt of the goods, merchandise, or property received for storage. This acknowledgment or receipt should be made by the warehouseman *in propria persona*, or by someone by such person authorized. Fourth, someone must appear as the storer of the goods, either as the owner of same or the agent of said owner; and whenever these four facts appear this office is of the opinion, and so holds, that this instrument is subject to a tax of 25 cents. (Vol. 1, Treas. Dec. (1899), No. 20646.)

Where cotton has been received for compression and handling and remains longer than the allotted time, no tax as a warehouse receipt accrues on the bill presented for the charges for storage. (Vol. 1, Treas. Dec. (1899), No. 20883.)

Conditions under which a bill of lading will be operative as a warehouse receipt and subject to taxation as such. (Vol. 1, Treas. Dec. (1899), No. 20914.)

When dray tickets evidencing a storage are taxable as warehouse receipts and when not taxable. (Vol. 1, Treas. Dec. (1899), No. 21079.)

When a warehouse receipt for grain is pledged as security for a loan, a tax accrues as a pledge, whether the pledge is made by the producer of the grain or by a dealer in grain. (Vol. 2, Treas. Dec. (1899), No. 21497.)

Books, household furniture, pictures, statuary, and wearing apparel not considered as "valuables;" and when safe-deposit or other companies receive such articles on deposit for hire, the receipts issued therefor must be stamped as warehouse receipts. The word "valuables" as used in paragraph 143, Circular 503, revised, defined. (Vol. 2, Treas. Dec. (1899), No. 21558.)

When no regular warehouse receipt has been issued in exchange for cartmen's tally tickets covering goods delivered for storage, then each tally ticket will be held to cover a separate consignment, and will require to be stamped as a warehouse receipt. (Vol. 2, Treas. Dec. (1899), No. 21493.)

Pawnbrokers' tickets not a warehouse receipt where the article is not deposited for storage purposes, but as a pledge. (Vol. 2, Treas. Dec. (1899), No. 21524.)

SCHEDULE B.

Medicinal proprietary articles and preparations.

(1) Medicinal proprietary articles and preparations: For and upon every packet, box, bottle, pot, or phial, or other inclosure, containing any pills, powders, tinctures, troches or lozenges, sirups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters, (except natural spring waters and carbonated natural spring waters), essences, spirits, oils, and all medicinal preparations or compositions whatsoever, made and sold, or removed for sale, by any person or persons whatever, wherein the person making or preparing the same has or claims to have any private formula, secret, or occult art for the making or preparing the same, or has or claims to

have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trade-mark, or which, if prepared by any formula, published or unpublished, are held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines, or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body, as follows: Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall not exceed, at the retail price or value, the sum of five cents, one-eighth of one cent.

Rate of tax.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of five cents and shall not exceed, at the retail price or value, the sum of ten cents, two-eighths of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of ten cents and shall not exceed at the retail price or value the sum of fifteen cents, three-eighths of one cent.

Where each packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of fifteen cents and shall not exceed the retail price or value of twenty-five cents, five-eighths of one cent. And for each additional twenty-five cents of retail price or value or fractional part thereof in excess of twenty-five cents, five-eighths of one cent.

Such articles in the hands of wholesale or retail dealers July 1, 1898, must be stamped when sold at retail. (Vol. 1, Treas. Dec. (1898), No. 19527.)

Insect powders not taxable. (Vol. 1, Treas. Dec. (1898), No. 19557.)

Soaps are taken out of the category of toilet or laundry articles by a special claim being made for their curative or healing properties, or for their effects on the skin or complexion, and in such cases the packages containing the same must be stamped as medicinal or cosmetic articles. (Vol. 1, Treas. Dec. (1898), No. 19564.)

Malt extract is liable to stamp tax under Schedule B, the same as other medicines if advertised as a tonic. The fact that the substance of the article has already paid tax as beer does not operate to exempt it from tax in its new and medicinal form. (Vol. 2, Treas. Dec. (1898), No. 19599.)

Extracts of beef and food preparations. (Vol. 2, Treas. Dec. (1898), No. 19687.)

Bitters will be presumed to be medicinal preparations and taxable, unless the nonmedicinal character is clearly shown. (Vol. 2, Treas. Dec. (1898), No. 19703.)

Bad faith in fixing the retail price of articles by the manufacturer. (Vol. 2, Treas. Dec. (1898), No. 20324.)

Opinion of the Attorney-General in regard to the taxability of medicinal preparations under Schedule B. (Circular No. 205, Int. Rev. No. 519; Dec. 22, 1898. Vol. 2, Treas. Dec. (1898), No. 20460.)

Abridged cautionary notice may be affixed to samples of medicines intended for gratuitous distribution in certain cases. (Vol. 2, Treas. Dec. (1899), No. 21611.)

Method of computing taxes on medicines furnished by physicians who advertise their ability to cure diseases. (Vol. 2, Treas. Dec. (1899), No. 21612.)

Stamp tax. Medicinal preparations. Medicines and medicinal preparations defined. Claim of "velvet" molasses candy as a remedial agent takes it out of the category of candies and places it in the category of medicinal preparations. (Vol. 2, Treas. Dec. (1899), No. 21734.)

Perfumery and cosmetics, etc.

(2) Perfumery and cosmetics and other similar articles: For and upon every packet, box, bottle, pot, phial, or other inclosure containing any essence, extract, toilet water, cosmetic, vaseline, petrolatum, hair oil, pomade, hair dressing, hair restorative, hair dye, tooth wash, dentifrice, tooth paste, aromatic cachous, or any similar substance or article, by whatsoever name the same heretofore have been, now are, or may hereafter be called, known, or distinguished, used or applied, or to be used or applied as perfumes or as applications to the hair, mouth, or skin, or otherwise used, made, prepared, and sold or removed for consumption and sale in the United States, where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall not exceed at the retail price or value the sum of five cents, one-eighth of one cent.

Rate of tax.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of five cents, and shall not exceed the retail price or value of ten cents, two-eighths of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of ten cents and shall not exceed the retail price or value of fifteen cents, three-eighths of one cent.

Where such packet, box, bottle, pot, phial, or other inclosure, with its contents, shall exceed the retail price or value of fifteen cents and shall not exceed the retail price or value of twenty-five cents, five-eighths of one cent. And for each additional twenty-five cents of retail price or value or fractional part thereof in excess of twenty-five cents, five-eighths of one cent.

Rulings on perfumery and cosmetics. (Circular No. 501, revised Feb. 8, 1900. Vol. 3, Treas. Dec., Int. Rev. No. 37.)

Chewing gum.

(3) Chewing gum or substitutes therefor: For and upon each box, carton, jar, or other package containing chewing gum of not more than one dollar of actual retail value, four cents; if exceeding one dollar of retail value, for each additional dollar or fractional part thereof, four cents; under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Regulations in regard to chewing gum. (Circular No. 120, Vol. 1, Treas. Dec. (1898), No. 19579).

WINES.

Sparkling or other wines bottled for sale.

(4) Sparkling or other wines, when bottled for sale, upon each bottle containing one pint or less, one cent.

Upon each bottle containing more than one pint, two cents.

Digest of rulings relating to tax under war-revenue law on sparkling or other wines when bottled for sale. (Vol. 2, Treas. Dec. (1898), No. 19961.)

Articles on hand July 1, 1898.

(5) That all articles and preparations provided for in this schedule which are in the hands of manufacturers or

of wholesale or retail dealers on the first day of July, eighteen hundred and ninety-eight, shall be subject to the payment of the stamp taxes herein provided for, but it shall be deemed a compliance with this Act as to such articles on hand in the hands of wholesale or retail dealers as aforesaid who are not the manufacturers thereof to affix the proper adhesive tax stamp at the time the packet, box, bottle, pot, or phial, or other inclosure with its contents is sold at retail.

Imported articles.—All medicinal articles, and perfumeries and cosmetics, wines, etc., imported from foreign countries are liable to the stamp tax as similar articles of domestic manufacture, in addition to the import duty on the same, and the stamps must be affixed by the owner or importer before the same are sold or offered for sale, and affixed in the same manner upon every packet, box, bottle, phial, or other inclosure containing the same.

Regulations as to the liability of medicinal preparations and perfumery and cosmetics to the stamp tax under Schedule B, act of June 13, 1898. (Circular No. 501, revised, Feb. 8, 1900; Vol. 3, Treas. Dec., Int. Rev. No. 37.)

SEC. 26. *Act of June 13, 1898 (30 Stat., 448).* There shall be an allowance of drawback on articles mentioned in Schedule B of this Act on which any internal-revenue tax shall have been paid, equal in amount to the stamp tax paid thereon, and no more, when exported, to be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States, out of any money arising from internal taxes not otherwise appropriated: *Provided*, That no allowance of drawback shall be made for any such articles exported prior to July first, eighteen hundred and ninety-eight. The evidence that any such tax has been paid as aforesaid shall be furnished to the satisfaction of the Commissioner of Internal Revenue by the person claiming the allowance of drawback, and the amount shall be ascertained under such regulations as shall be prescribed from time to time by said Commissioner, with the approval of the Secretary of the Treasury.

Drawback.

Regulations, Series 7, No. 24.—Relative to the exportation, without payment of tax or with benefit of drawback or tax, of articles described in Schedule B.

Supplement No. 1: Concerning the exportation free of tax of proprietary articles.

STAMPS ON PALACE OR PARLOR AND SLEEPING CAR TICKETS.

SEC. 28. *Act of June 13, 1898 (30 Stat., 448.)* That from and after the first day of July, eighteen hundred and ninety-eight, a stamp tax of one cent shall be levied and collected on every seat sold in a palace or parlor car and on every berth sold in a sleeping car, the stamp to be affixed to the ticket and paid by the company issuing the same.

Method adopted in stamping tickets sold for seats in parlor cars and berths in sleeping cars. (Vol. 2, Treas. Dec. (1899), No. 21342.)

CHAPTER FIFTEEN.

PLAYING CARDS.

[Act of August 28, 1894 (28 Stat. 509).]

Sec.

38. Tax of 2 cents on every pack, containing not more than fifty-four cards, whether manufactured, sold, or removed, or in stock of any dealer.
39. Adhesive stamps to be affixed to each package, and canceled by the person using the stamp. Penalty, \$50.
40. Manufacturer to register with the collector of the district. Failure to register, penalty \$50.
41. Stamps to be furnished by the collector to registered manufacturers and importers.
42. Penalty for counterfeiting, defacing, or removing stamp or illegal use of the same.
43. Penalty for removal or sale of playing cards without having stamp

Sec.

- affixed. Cards may be removed for export without previous payment of tax.
44. Manufacturer removing or reusing any stamp, wrapper, or cover for the purpose of evading the tax liable to a fine of \$50 and forfeiture.
45. Penalty for selling or exposing for sale, removing, or concealing playing cards without having affixed the stamp thereto.
46. Every person who offers or exposes for sale any playing cards, whether of domestic or foreign manufacture, shall be deemed the manufacturer thereof and liable to the tax.
47. Assessment to be made by the commissioner in certain cases.

Tax of 2 cents upon every pack of playing cards.

SEC. 38. *Act of August 28, 1894 (28 Stat. 509).* That on and after the first day of August, eighteen hundred and ninety-four, there shall be levied, collected, and paid, by adhesive stamps, a tax of two cents for and upon every pack of playing cards containing not more than fifty-four cards, manufactured and sold or removed, and also upon every pack in the stock of any dealer on and after that date; and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make regulations as to dies and adhesive stamps.

Where packages of playing cards are sent out from the factory duly stamped and are thereafter opened and stamp broken, the cards can not be returned to the packages and sold under a broken stamp; a new stamp must be affixed to each package and duly canceled. (Vol. 2, Treas. Dec. (1899), No. 21634.)

Affixing and cancellation of stamp.

SEC. 39. That in all cases where an adhesive stamp is used for denoting the tax imposed by this Act upon playing cards, except as hereinafter provided, the person using or affixing the same shall write thereon the initials of his name and the date on which such stamp is attached or used, so that it may not again be used. And every person who fraudulently makes use of an adhesive stamp to denote any tax imposed by this Act without so effectually canceling and obliterating such stamp shall forfeit the sum of fifty dollars. The Commissioner of Internal Revenue is authorized to prescribe such method for the cancellation of stamps as substitute for, or in addition to the method prescribed

in this section as he may deem expedient and effectual. And he is authorized, in his discretion, to make the application of such method imperative upon the manufacturers of playing cards.

SEC. 40. That every manufacturer of playing cards shall register with the collector of the district his name or style, place of residence, trade, or business, and the place where such business is to be carried on, and a failure to register as herein provided and required shall subject such person to a penalty of fifty dollars.

Manufacturer to register with collector, penalty for failure to do so, \$50.

SEC. 41. That the Commissioner of Internal Revenue shall cause to be prepared, for payment of the tax upon playing cards, suitable stamps denoting the tax thereon. Such stamps shall be furnished to collectors requiring them, and collectors shall, if there be any manufacturers of playing cards within their respective districts, keep on hand at all times a supply equal in amount to two months' sales thereof, and shall sell the same only to such manufacturers as have registered as required by law and to importers of playing cards, who are required to affix the same to imported playing cards, and to persons who are required by law to affix the same to stocks of playing cards on hand when the tax thereon imposed first takes effect. Every collector shall keep an account of the number and denominate values of the stamps sold by him to each manufacturer and to other persons above described.

Stamps to be kept by collectors and furnished to registered manufacturers, importers, and persons having stock on hand.

Decision as to packing and stamping cards when sold in leather, plush, celluloid, or metal cases. (Vol. 1, Treas. Dec. (1898), No. 19024.)

SEC. 42. That if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument which shall have been provided or may hereafter be provided, made, or used in pursuance of the provisions of this Act or of any previous provisions of law on the same subjects, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled the impression or any part of the impression of any such stamp, die, plate, or other instrument, as aforesaid, upon any paper, or shall stamp or mark or cause or procure to be stamped or marked any paper with any such forged or counterfeited stamp, die, or plate, or other instrument or part of any stamp, die, plate, or other instrument, as aforesaid, with intent to defraud the United States of any of the taxes hereby imposed or any part thereof; or if any person shall utter, or sell, or expose to sale any paper, article, or thing having thereupon the impression of any such counterfeited stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, or any such forged, counterfeited, or resembled impression, or part of impression, as aforesaid, knowing the same to be forged, counterfeited, or resembled; or if any person shall knowingly use or permit the use of any stamp, die, plate, or other instrument which shall have been so provided, made, or used, as aforesaid, with intent to defraud the United States; or if any person shall fraudu-

Penalty for counterfeiting, defacing, or removing stamp, or illegal use of same.

lently cut, tear, or remove, or cause or procure to be cut, torn, or removed, the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of this Act, or of any previous provisions of law on the same subjects, from any paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall fraudulently use, join, fix, or place, or caused to be used, joined, fixed, or placed, to, with, or upon any paper, or any instrument or writing charged or chargeable with any of the taxes hereby imposed, any adhesive stamp, or the impression of any stamp, die, plate, or other instrument, which shall have been provided, made, or used in pursuance of law, and which shall have been cut, torn, or removed from any other paper or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall willfully remove or cause to be removed, alter or cause to be altered, the cancelling or defacing marks on any adhesive stamp, with intent to use the same, or to cause the use of the same, after it shall have been once used, or shall knowingly or willfully sell or buy such washed or restored stamps or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same, or prepare the same with intent for the further use thereof; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any washed, restored, or altered stamps, which have been removed from any article, paper, instrument, or writing, then, and in every such case, every person so offending, and every person knowingly and willfully aiding, abetting, or assisting in committing any such offense as aforesaid, shall, on conviction thereof, forfeit the said counterfeit, washed, restored, or altered stamps, and the articles upon which they are placed and be punished by fine not exceeding one thousand dollars, or by imprisonment and confinement to hard labor not exceeding five years, or both, at the discretion of the court. And the fact that any adhesive stamp so bought, sold, offered for sale, used, or had in possession as aforesaid, has been washed or restored by removing or altering the cancelling or defacing marks thereon, shall be prima-facie proof that such stamp has been once used and removed by the possessor thereof from some paper, instrument, or writing charged with taxes imposed by law, in violation of the provisions of this section.

This is a substantial reenactment of section 3429, Revised Statutes, as amended by section 17, act of March 1, 1879, the only change being the substitution of the word "act" for "chapter."

Penalty for removal or sale of playing cards without having stamps affixed.

SEC. 43. That whenever any person makes, prepares, and sells or removes for consumption or sale, playing cards, whether of domestic manufacture or imported, upon which a tax is imposed by law, without affixing thereto an adhesive stamp denoting the tax before mentioned, he shall incur a penalty of fifty dollars for every omission to affix such

stamp: *Provided*, That playing cards may be removed from the place of manufacture for export to a foreign country, without payment of tax or affixing stamps thereto, under such regulations and the filing of such bonds as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Playing cards for export excepted.

Concerning the exportation without payment of tax of playing cards, see Regulations, Series 7, No. 19, revised, and the following supplements:

Supplement No. 1: Relative to the exportation of playing cards.

Supplement No. 2, amending Supplement No. 1: Relative to the exportation of playing cards.

Supplement No. 3 (Oct. 18, 1898): Concerning exportation free of tax of playing cards.

Where a box of playing cards is opened and cards withdrawn, a new stamp must be affixed to the package before its resale. The broken stamp can not protect the package. In sending packs of cards abroad, even as samples, all the provisions of the law and regulations relating to the exportation of playing cards must be complied with, unless tax stamps are affixed to these packages. (Vol. 2, Treas. Dec. (1899), No. 21669.)

SEC. 44. That every manufacturer or maker of playing cards who, after the same are so made, and the particulars hereinbefore required as to stamps have been complied with, takes off, removes, or detaches, or causes, or permits, or suffers to be taken off, or removed, or detached, any stamp, or who uses any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover, with such stamp when first used, with the intent to evade the stamp duties, shall, for every such article, respectively, in respect of which any such offense is committed, be subject to a penalty of fifty dollars, to be recovered together with the costs thereupon accruing; and every such article or commodity as aforesaid shall also be forfeited.

Penalty for removal or reuse of stamp, wrapper, or cover for the purpose of evading the tax.

SEC. 45. That every maker or manufacturer of playing cards who, to evade the tax or duty chargeable thereon, or any part thereof, sells, exposes for sale, sends out, removes, or delivers any playing cards before the duty thereon has been fully paid, by affixing thereon the proper stamp, as provided by law, or who, to evade as aforesaid, hides or conceals, or causes to be hidden or concealed, or removes or conveys away, or deposits, or causes to be removed or conveyed away from or deposited in any place, any such article or commodity, shall be subject to a penalty of fifty dollars, together with the forfeiture of any such article or commodity.

Penalty for selling or exposing for sale, removing, or concealing playing cards without affixing the stamp.

SEC. 46. That the tax on playing cards shall be paid by the manufacturer thereof. Every person who offers or exposes for sale playing cards, whether the articles so offered or exposed are of foreign manufacture and imported or are of domestic manufacture, shall be deemed the manufacturer thereof, and subject to all the duties, liabilities, and penalties imposed by law in regard to the sale of domestic articles without the use of the proper stamps denoting the tax paid thereon, and all such articles of foreign manufacture shall, in addition to the import duties imposed on the same, be subject to the stamp tax prescribed in this Act.

Playing cards of domestic or foreign manufacture shall not be offered or exposed for sale without affixing stamp denoting payment of tax.

Assessment to
be made within
two years in cer-
tain cases.

SEC. 47. That whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale by the manufacturer thereof, without the use of the proper stamp, in addition to the penalties imposed by law for such sale or removal, it shall be the duty of the Commissioner of Internal Revenue, within a period of not more than two years after such removal or sale, upon such information as he can obtain, to estimate the amount of the tax which has been omitted to be paid, and to make an assessment therefor upon the manufacturer or producer of such article. He shall certify such assessment to the collector, who shall immediately demand payment of such tax, and upon the neglect or refusal of payment by such manufacturer or producer, shall proceed to collect the same in the manner provided for the collection of other assessed taxes.

This is a reenactment, without change, of section 3437, Revised Statutes.

Cards for game called "authors," and the like, differing wholly from ordinary playing cards, are held not to be subject to tax under this act.

It is held that any number of cards in a deck above fifty-four and not exceeding another fifty-four must be regarded, for the purposes of this act, as belonging to another pack, upon which an additional tax of 2 cents must be paid. (40 Int. Rev. Rec., 277.)

CHAPTER SIXTEEN.

BANKS AND BANKERS.

Sec.	Sec.
3407. Definition of words "bank" and "banker."	[3413b.] Tax on circulation other than national banks used and paid out.
3408 (amended). Tax on circulation of banks and bankers.	[3413c.] Return of amounts and payment of tax.
3409. Taxes, when payable; how calculated.	3414. Banks' and bankers' monthly returns.
3411. Circulation, when exempted from tax.	3415. In default of return, Commissioner to estimate, etc.
3412. Tax on notes of persons or State banks used as circulation, etc.	3416. State banks converted into national banks; returns, how made.
3413. Tax on notes of town, city, or municipal corporations paid out by banks, etc.	3417. Certain provisions of this chapter not to apply to national banks.
[3413a.] 'Tax on certain parties' own notes used for circulation and paid out by them.	

SEC. 3407. Every ^{*}incorporated or other bank, and every ^{Definition of words "bank" and "banker."} person, firm, or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker.

In regard to special tax imposed on bankers by act of June 13, 1898, see page 133.

Who are bankers under this section? (*Selden v. Equitable Trust Company*, 94 U. S., 419; 23 Int. Rev. Rec., 171. See note, p. 133.)

Liability of foreign banks doing business in United States. Suits to recover taxes on capital employed. (*United States v. Bank of Montreal*; 30 Int. Rev. Rec., 310; 21 Fed. Rep., 236.) See notes under next section.

SEC. 3408. There shall be levied, collected, and paid, as hereafter provided:

* * * * *

Third. A tax of one-twelfth of one per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and an additional tax of one-sixth of one per centum each month upon the average amount of such circulation, issued as aforesaid, beyond the amount of ninety per centum of the capital ^{Tax on circulation.}

of any such bank, association, corporation, company, or person.

On circulation
of branch banks.

In the case of banks with branches, the tax herein provided shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it.

Taxes on deposits and capital repealed. Act of March 3, 1883. (22 Stat., 488.) The taxation ceased December 1, 1882. (29 Int. Rev. Rec., 171; 17 Op. Atty. Gen., 539.)

Congress did not intend that the question of taxation upon capital employed in the business of banking should depend upon the mere name given to such business, either by those engaged in it or by others. When the plaintiff admits that his business was that of buying and selling stocks for his customers, and that in such business he employed capital, he proves that he was a banker within the statutory definition, and that, within the meaning of section 3408, his capital was employed in the business of banking. He brings himself within the rule that Congress prescribed for determining who, *for the purposes of the taxation in question*, though not necessarily in the commercial sense, were bankers and what was banking business. (*Richmond v. Blake* (1889), 132 U. S., 592; 36 Int. Rev. Rec., 24.)

The tax on circulation of national banks is paid to the Treasurer of the United States. (§ 5214 as amended. See section 3417, p. 337).

Certificates of indebtedness issued by a person or a corporation are not taxable as "circulation" under section 3408, unless intended to circulate as money. (*United States v. Wilson*, 106 U. S., 620.)

What is capital? (*Mechanics and Farmers' Bank v. Townsend*, collector, 5 Blatch., 315.)

A bank in Canada, which has established a branch in Chicago, must be held to carry on a banking business within the definition of section 3407, it having a place of business where credits were opened by the deposit of money, subject to be paid or remitted upon draft, check, or order, and where bills of exchange were issued and sold.

The meaning and intent of the whole of section 3408 was to assume that the active moneys employed by an incorporated bank were represented by its capital, and that the capital of a branch bank was the amount which was allotted to it, or which it was permitted to use, and the branch, for the purpose of this tax on capital, was deemed a separate entity. (*United States v. Bank of Montreal*, 30 Int. Rev. Rec., 310; 21 Fed. Rep., 236.)

Taxes, when
payable.

SEC. 3409. The taxes provided in the preceding section shall be paid semi-annually, on the first day of January and the first day of July; but the same shall be calculated at the rate per month as prescribed by said section, so that the tax for six months shall not be less than the aggregate would be if such taxes were collected monthly.

How calcu-
lated.

In regard to abating tax against insolvent national, State, and savings banks, see § 22, act of March 1, 1879 (20 Stat., 327), and Supplement, R. S., No. 1, p. 243.

Circulation,
when exempted
from tax.

SEC. 3411. Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding five per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation; and whenever any bank which has ceased to issue notes for circulation deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secre-

tary of the Treasury shall prescribe, it shall be exempt from any tax upon such circulation.

The exempting provision of the first clause of this section, when considered in connection with section 3416, is interpreted as not intended to apply to any national bank except a bank that had been converted from a State bank or banking association into a national bank; and then only to the outstanding circulation of such State bank or banking association.

SEC. 3412. Every national banking association, State bank, or State banking association, shall pay a tax of ten per centum on the amount of notes of any person, or of any State bank or State banking association, used for circulation and paid out by them. Tax on notes of persons or State banks used as circulation, etc.

The act of March 3, 1875 (18 Stat., 507), provided as follows: "That the Secretary of the Treasury be, and he is hereby, authorized and directed to settle and release any claims for tax on circulation of evidences of indebtedness made against any mining, manufacturing, or other corporations other than against any national banking association, State bank, or banking association, by such corporations paying the tax, without penalty, that shall have accrued thereon since November first, eighteen hundred and seventy-three; and that the provisions of section three thousand four hundred and twelve of the Revised Statutes of the United States shall not be construed in pending cases, except as to national banking associations, to apply to such evidences of indebtedness issued and reissued prior to the passage of this act, but said section shall be construed as applying to such evidences of indebtedness issued after the passage hereof."

Internal-revenue tax on State banks. (14 Op. Atty. Gen., 98; 16 Int. Rev. Rec., 57.)

SEC. 3413. Every national banking association, State bank, or banker, or association, shall pay a tax of ten per centum on the amount of notes of any town, city, or municipal corporation, paid out by them. Tax on notes of town, city, or municipal corporations, paid out by banks, etc.

This tax not a direct tax and not repugnant to the Constitution. (Veazie Bank v. Fenno, 8 Wall., 533; 10 Int. Rev. Rec., 195.)

Above decision cited and approved (National Bank v. United States, 101 U. S., 1) where the United States sued a national bank for 10 per cent of the notes of the city of Little Rock paid out. See also Deposit Savings Association v. Marks (3 Woods, 553; 23 Int. Rev. Rec., 241).

Section 3583 provides a penalty for issuing notes for a less sum than \$1 intended to circulate as money. (United States v. Van Auken (96 U. S., 6 Otto) 366; 24 Int. Rev. Rec., 204.)

[SEC. 3413a.] Section 19 of the act of February 8, 1875 (18 Stat., 511). That every person, firm, association other than national bank associations, and every corporation, State bank, or State banking association, shall pay a tax of ten per centum on the amount of their own notes used for circulation and paid out by them. Ten per cent tax on parties, other than national banks, on their own notes used for circulation, and paid out.

[SEC. 3413b.] Section 20 of the act of February 8, 1875. That every such person, firm, association, corporation, State bank, or State banking association, and also every national banking association, shall pay a like tax of ten per centum on the amount of notes of any person, firm, association other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city, or municipal corporation, used for circulation and paid out by them. Ten per cent tax on circulation of other than national banks used and paid out.

The effect of the act of February 8, 1875, was to extend sections 3412 and 3413, which included only banks and banking associa-

tions, to all persons, firms, associations, and corporations. The subject-matter of the tax, to wit, "notes used for circulation paid out by them" was the same.

Construction of sections 19 and 20, act of February 8, 1875. (21 Int. Rev. Rec., 346.)

"Wages certificates" of Philadelphia and Reading Railroad taxable. (16 Op. Atty. Gen., 341; 25 Int. Rev. Rec., 167.)

Tax limited to obligations payable in money. (*Hollister v. Zion's Co-operative Mercantile Institution*, 111 U. S., 62; 30 Int. Rev. Rec., 111. *In re Aldrich*, 16 Fed. Rep., 369.)

Glass manufacturers' cases. Warrick and Stanger were glass manufacturers at Glassboro, N. J., and issued their notes in various amounts, from 5 cents to \$5 each, in payment of wages due to their hands. These notes circulated as money, and when redeemed were constantly reissued. Every issue of the notes taxable. (*United States v. Warrick*, 31 Int. Rev. Rec., 327.)

A national bank paying out on checks and otherwise notes of a bank chartered in a foreign country is subject to tax of 10 per cent upon the total amount of all notes it has received and used as a circulating medium. (20 Op. Atty. Gen., 534.)

Notes of Canadian Banks (33 Int. Rev. Rec., 405; 34 *ibid.*, 53, 61, and 77; also vol. 1, Treas. Dec. (1899), No. 20507).

Notes of the Dominion of Canada (34 Int. Rev. Rec., 61).

It is indispensable that the instrument taxed should be a note.

Ice tickets not taxable (19 Op. Atty. Gen., 98).

Opinion of the Attorney-General on the question submitted by the Commissioner of Internal Revenue as to whether payroll checks issued by manufacturers and others, and certificates issued by clearing-house associations when used for circulation, are notes within the meaning of section 19, act of February 8, 1875, on which the tax of 10 per centum is imposed. (39 Int. Rev. Rec., 398; 20 Op. Atty. Gen., 681.)

Return of
amounts and
payment of tax.

[SEC. 3413c.] Section 21 of the act of February 8, 1875 (18 Stat., 371). That the amount of such circulating notes, and of the tax due thereon, shall be returned, and the tax paid at the same time, and in the same manner, and with like penalties for failure to return and pay the same, as provided by law for the return and payment of taxes on * * * circulation, imposed by the existing provisions of internal revenue law.

Banks' and
bankers' month-
ly returns.

SEC. 3414. A true and complete return of the monthly amount of circulation, * * * as aforesaid, and of the monthly amount of notes of persons, town, city, or municipal corporation, State banks, or State banking associations paid out as aforesaid for the previous six months, shall be made and rendered in duplicate on the first day of December and the first day of June, by each of such banks, associations, corporations, companies, or persons, with a declaration annexed thereto, under the oath of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amounts subject to tax, as aforesaid; and one copy shall be transmitted to the collector of the district in which any such bank, association, corporation, or company is situated, or in which such person has his place of business, and one copy to the Commissioner of Internal Revenue.

The words "of deposits and of capital" are omitted in line 2 as obsolete.

In default of
return, Commis-
sioner to esti-
mate, etc.

SEC. 3415. In default of the returns provided in the preceding section, the amount of circulation, * * * and notes of persons, town, city, and municipal corporations,

State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Commissioner of Internal Revenue, upon the best information he can obtain. And for any refusal or neglect to make return and payment, any such bank, association, corporation, company, or person so in default shall pay a penalty of two hundred dollars, besides the additional penalty and forfeitures provided in other cases.

The words "deposit, capital" omitted in line 2.

See section 3176, p. 83, as to additional penalties.

SEC. 3416. Whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed five per centum of the capital before such conversion of such State bank or banking association.

State banks converted into national banks; returns, how made.

This section (3416) is practically obsolete.

SEC. 3417. The provisions of this chapter, relating to the tax on the * * circulation of banks, and to their returns, except as contained in sections * thirty-four hundred and eleven, thirty-four hundred and twelve, *thirty-four hundred and thirteen*, and thirty-four hundred and sixteen, and such parts of sections thirty-four hundred and fourteen, and thirty-four hundred and fifteen as relate to the tax of ten per centum on certain notes, shall not apply to associations which are taxed under and by virtue of Title "National Banks."

Certain provisions of this chapter not to apply to national banks.

Act Feb. 18, 1875 (18 Stat., 319).

CHAPTER SEVENTEEN.

PROVISIONS COMMON TO SEVERAL OBJECTS OF TAXATION.

Sec.	Sec.
3443. Fraudulent claims for drawback; penalty.	3454. Sales to evade tax; forfeiture.
3444. Collector's monthly account of articles in bonded warehouses and articles exported.	3455. Disposing of or receiving or making empty stamped packages, penalties.
3445. Stamps, instruments for attaching, canceling, etc.	3456. Penalty and forfeiture by distillers, etc., for omitting things required and for doing things forbidden.
3446 (amended). Power to alter or change stamps, marks, labels, etc.	3457. Packages included in forfeiture of goods.
[3446a.] Stamps to be sent to officers by mail, registered.	3458. Goods seized may be delivered to marshal before process issues, etc.
[3446b.] Regarding imprinting stamps heretofore used. Section 5, act of June 13, 1898.	3459. Bonding of goods seized.
3447. Where mode of assessing or collecting tax is not provided for; regulations authorized.	3460. Proceedings on seizure of goods valued at \$500 or less.
3448. Internal-revenue laws, when coextensive with jurisdiction of United States.	3461. Application for remission.
3449. Removing liquors under other than the proper name known to the trade; penalty.	3462. Search warrants.
3450. Removing or concealing articles with intent to defraud; forfeiture and penalty.	3463 and [3463a]. Informers' rewards.
3451. Fraudulently executing documents; penalty.	Appropriation for detecting frauds.
Repealing and saving clause. Act of August 28, 1894.	3464. Purchasing for the Government goods subject to tax.
3452. Having property in possession with intent to sell in fraud of law or to evade taxes; penalty.	3465. Construction of act March 2, 1833. Act of August 13, 1894. Guarantee corporation may be accepted as sole surety on recognizances, stipulations, bonds, and undertakings.
3453. Property found in possession in fraud of revenue laws; forfeiture.	Section 5 of the legislative, executive, and judicial appropriation act of March 2, 1895. Relative to official bonds.
	Section 72, act of August 28, 1894. Saving provisions as to repealed laws.
	Section 31, act of June 13, 1898. Former laws made applicable.
	Section 51, act of June 13, 1898. Act when to take effect.

SEC. 3441. Relative to drawback on fermented liquors; repealed by act of June 18, 1890. See page 324.

SEC. 3442. Obsolete by repeal of section 3441.

Fraudulent
claims for draw-
back; penalty.

SEC. 3443. Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal duty shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid as aforesaid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of five hundred dollars, at the election of the Secretary of the Treasury.

Section 3330, p. 204, provides a penalty in the case of fraudulent claims for drawback on spirits, and section 25, act of February 8, 1875 (§ [3386a], p. 254), in the case of fraudulent claims for drawback on tobacco.

Drawback is now allowed on distilled spirits, tobacco, snuff, and cigars, articles mentioned in Schedule B, and stills.

SEC. 3444. Every collector who has charge of any warehouse in which distilled spirits, or other articles, are stored in bond, shall render a monthly account of all such articles to the Commissioner of Internal Revenue, by whom such account shall be examined and adjusted monthly, so as to exhibit a true statement of the responsibility of such collector thereon. In adjusting such account, the collector shall be charged with all the articles which may have been deposited or received under the provisions of law, in any warehouse in his district and under his control, and shall be credited with all such articles shown to have been removed therefrom according to law, including transfers to other collectors and to his successor in office, and also whatever allowances may have been made in accordance with law to any owner of such goods or articles for leakage or other losses.

Collector's monthly account of articles in bonded warehouses and articles exported.

And every collector from whose district any distilled spirits, tobacco, snuff, or cigars are shipped in bond, under the provisions of this Title, shall render a monthly account of the same to the Commissioner of Internal Revenue, showing the amount of each article produced and shipped in bond, the amounts of which the exportation is completed according to law, and the amount remaining unaccounted for at the end of each month; also any excesses or deficiencies on the amounts originally reported as shipped.

SEC. 3445. The Commissioner of Internal Revenue may make such change in stamps, and may prescribe such instruments or other means for attaching, protecting, and canceling stamps, for tobacco, snuff, cigars, distilled spirits, and fermented liquors, or either of them, as he and the Secretary of the Treasury shall approve; such instruments to be furnished by the United States to the person using the stamps to be affixed therewith, under such regulations as the Commissioner of Internal Revenue may prescribe.

Changes of stamps, instruments for attaching, protecting, and canceling.

Rubber stamps may be used instead of stencils for canceling strip stamps on cigar boxes. (Circular letter, Oct. 15, 1897; 43 Int. Rev. Rec., 385.)

SEC. 3446, *as amended by section 18, act of March 1, 1879 (20 Stat., 327)*. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may establish and, from time to time, alter or change the form, style, character, material, and device of any stamp, mark, or label used under any provision of the laws relating to internal revenue. Such stamps shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as he, with the approval of the Secretary of the Treasury, may prescribe; and he is hereby authorized and empowered to make, with the approval of the Secretary of the Treasury, all needful regulations relating thereto; and all pains, penalties, fines, and forfeitures now provided by law relating to internal-revenue stamps shall apply to and have full force and effect in relation to any and all stamps which may or shall be so established by the Commissioner of Internal Revenue:

Power to establish, alter, or change internal-revenue stamps, marks, or labels, etc.

Provided, Such stamps or device or instrument or means Expense.

of removal or obliteration, shall entail no additional expense upon the persons required to affix or use the same.

See section 321, p. 47, as to authority of Commissioner to provide stamps, etc.

Stamps for special taxes, section 3238, p. 202; for distilled spirits, section 3312, p. 194; for imitation wines, section 3328, p. 202; for fermented liquors, section 3341, p. 229; for tobacco, section 3369, p. 245; for cigars, section 3395, p. 261; for oleomargarine, section 8, act of August 2, 1886, p. 272. See appropriate sections for other articles.

The portraits of living persons upon internal-revenue stamps not prohibited by section 3576, R. S., but their exclusion therefrom is in consonance with its spirit. (14 Op. Atty. Gen., 528.)

Beer stamps now in use will not be available to pay tax if rate is increased. (Vol. 1, Treas. Dec. (1898), No. 19194.)

Hamilton-Brooks cigar stamp. (16 Op. Atty. Gen., 444; 26 Int. Rev. Rec., 33; 17 Op. Atty. Gen., 111.)

Use of the Hunter stamp. (15 Op. Atty. Gen., 191.)

Fletcher's invention. (11 Ct. Clms., 748.)

Alleged infringement of patent. (Fletcher v. Blake, 131 U. S., xcvcii appendix; 27 Int. Rev. Rec., 6. Hollister v. Benedict and Burnham Manufacturing Company, 113 U. S., 59; 31 Int. Rev. Rec., 30. Solomons v. United States, 22 Ct. Clms., 335.)

Stamps for spirits, beer, tobacco, snuff, and cigars are not legitimate articles of traffic. (11 Int. Rev. Rec., 57.)

[SEC. 3446a.] *Extract from legislative, executive, and judicial appropriation act, approved August 15, 1876. (19 Stat., 152). * * ** And hereafter the transmission of internal revenue stamps to the officers of the internal revenue service shall be made through the mails of the United States in registered packages. * * *

Internal-revenue stamps may be mailed to collectors and stamp deputy collectors or returned by them to the Commissioner in full packages without regard to the four-pound limit of weight. (Vol. 1, Treas. Dec. (1898), No. 18947.)

[3446b.] *Section 5, act of June 13, 1898 (30 Stat., 448).* Until appropriate stamps are prepared and furnished, the stamps heretofore used to denote the payment of the internal-revenue tax on fermented liquors, tobacco, snuff, cigars and cigarettes may be stamped or imprinted with a suitable device to denote the new rate of tax, and shall be affixed to all packages containing such articles on which the tax imposed by this Act is paid. And any person having possession of unaffixed stamps heretofore issued for the payment of the tax upon fermented liquors, tobacco, snuff, cigars, or cigarettes shall present the same to the collector of the district, who shall receive them at the price paid for such stamps by the purchasers and issue in lieu thereof new or imprinted stamps at the rate provided by this Act.

Imprinting new rate on old stamps.

Where mode of assessing or collecting any tax is not provided for; regulations.

SEC. 3447. Whenever the mode or time of assessing or collecting any tax which is imposed is not provided for, the Commissioner of Internal Revenue may establish the same by regulation. He may also make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

Internal-revenue laws, when coextensive with jurisdiction of United States.

SEC. 3448. The internal-revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection-district or not.

Indian Territory: The Cherokee Tobacco (Bondinot's factory) (11 Wall., 616; 14 Int. Rev. Rec., 11).

In the Cherokee tobacco case (11 Wall., 616) the Supreme Court ruled that the Indian Territory was included in the general terms of this section, notwithstanding any prior treaty, and that the provisions of the internal-revenue law as to distilled spirits, fermented liquors, and tobacco were applicable therein.

Liquor Dealers in Indian Territory. (22 Int. Rev. Rec., 109; 23 *ibid.*, 125. United States v. Forty-three Gallons of Whisky; 108 U. S., 491; 29 Int. Rev. Rec., 188.)

Introduction of spirituous liquors in Indian country. (Secs. 2139, 2140, R. S.)

What constitutes "Indian country." (Bates v. Clark, 95 U. S., 204; United States v. Forty-three Gallons of Whisky, 93 U. S., 188.)

Section 2141, Revised Statutes, provides as follows: Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits shall be liable to a penalty of one thousand dollars; and the superintendent of Indian affairs, Indian agent, or subagent, within the limit of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same.

The Attorney-General, in an opinion rendered October 4, 1898, held that the establishment of a distillery in the Indian Territory, notwithstanding it was on land to which the Indian title was extinct, would be in contravention of law. (Vol. 2, Treas. Dec. (1898), No. 20162.)

Special-tax stamps, being only receipts for taxes paid, may be issued by the collector of internal revenue, notwithstanding acts of Congress relative to sale of liquors in the Indian Territory. (Vol. 1, Treas. Dec. (1898), No. 18911.)

An act to establish a United States court in the Indian Territory. (Act of Mar. 1, 1889, (25 Stat., 783.)

Indian Territory added to the collection district of Kansas August 8, 1881.

An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes. (Act of May 2, 1890, 26 Stat., 81.)

Oklahoma. (19 Op. Atty. Gen., 569.)

Alaska added to Oregon district December 27, 1872.

Alaska, case of Savaloff (17 Int. Rev. Rec., 20); case of Stephens (28 *ibid.*, 194).

The payment of the special tax is no defense to a prosecution for illegally selling liquors in Alaska. (Endleman v. United States, 86 Fed. Rep., 456.)

An act to define and punish crimes in the District of Alaska, and to provide a code of criminal procedure for said district. Act of March 3, 1899 (30 Stat., 1274). Section 142 repeals section 1955, Revised Statutes, and all that part of section 14 of the act of May 17, 1884 (23 Stat., 24), after the word "provided."

Section 477 provides: "That nothing in this act shall in any way repeal, conflict, or interfere with the public general laws of the United States imposing taxes on the manufacture and sale of intoxicating liquors for the purpose of revenue and known as the 'internal-revenue laws.'"

SEC. 3449. Whenever any person ships, transports, or removes any spirituous or fermented liquors or wines, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such act to be done, he shall forfeit said liquors or wines, and casks or packages, and be subject to pay a fine of five hundred dollars.

Removing any liquors or wines under other than trade names; penalty.

Construction of this section in case of shipment of spirits under a false designation. (Attorney-General Taft's letter to Secretary of the Treasury; 22 Int. Rev. Rec., 261.)

Stamps, marks, and brands not to be obscured by overpack-age. (30 Int. Rev. Rec., 278.)

The requirements of this statute can not be limited to distillers, manufacturers, and rectifiers, as its language covers all persons who ship, transport, or remove liquors or wines. (*United States v. Campe et al.*, N. Dist. Cal. (1898), 89 Fed. Rep., 697.)

Section 3449 not unconstitutional because in some cases it incidentally acts as a protection to trade-marks. (*United States v. Loeb* (1892), 49 Fed. Rep., 636; 38 Int. Rev. Rec., 78.)

The term "package," as used in section 3449, includes every box, barrel, or other receptacle into which distilled spirits have been placed for shipment or removal, either in quantity or in separate small packages, as bottles or jugs. (*United States v. 132 Packages of Spirituous Liquore and Wines et al.* (1896), Circuit Court of Appeals, 76 Fed. Rep., 364; 42 Int. Rev. Rec., 438.)

Removing or
concealing arti-
cles with intent
to defraud United
States of tax.

SEC. 3450. Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the depositor concealment thereof, respectively, shall be forfeited.

Penalty and
forfeiture.

And every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine or penalty of not more than five hundred dollars. And all boilers, stills, or other vessels, tools and implements, used in distilling or rectifying, and forfeited under any of the provisions of this Title, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for distillation, shall, under the direction of the court in which the forfeiture is recovered, be sold at public auction, and the proceeds thereof, after deducting the expenses of sale, shall be disposed of according to law.

Spirits forfeit-
ed; how disposed
of.

And all spirits or spirituous liquors which may be forfeited under the provisions of this Title, unless herein otherwise provided, shall be disposed of by the Commissioner of Internal Revenue as the Secretary of the Treasury may direct.

An unofficial person may seize property as forfeited to the United States, and the Government, if it chooses, may adopt the seizure and make it the basis of legal proceedings. (13 Op. Atty. Gen., 253.)

Rules of the Supreme Court relating to pleadings in cases of seizure, etc., construed. (*United States v. Twenty-five Barrels of Alcohol*, 10 Int. Rev. Rec., 17.)

Circular No. 224, relative to destruction of spirits. (26 Int. Rev. Rec., 105.)

SEC. 3451. Every person who simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal-revenue laws, or by any regulation made in pursuance thereof, or who procures the same to be falsely or fraudulently executed, or who advises, aids in, or connives at such execution thereof, shall be imprisoned for a term not less than one year nor more than five years; and the property to which such false or fraudulent instrument relates shall be forfeited.

Fraudulently executing documents required by internal-revenue laws; penalty.

See sections 5418, p. 391, and 5479, p. 392, in appendix, penalties for forging, altering, counterfeiting affidavits, bonds, public records, etc.

Fraudulent Form 122 forfeits spirits to which it relates. (Thacher, claimant of 102 packages of distilled spirits, v. The United States, 103 U. S. (13 Otto), 679, affirming 15 Blatch, 15; 27 Int. Rev. Rec., 144.)

SEC. 3452. Every person who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal-revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of five hundred dollars or not less than double the amount of taxes fraudulently attempted to be evaded.

Having property in possession with intent to sell in fraud of law, or to evade taxes; penalty.

SEC. 3453. All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal-revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district, or by such other collector or deputy collector as may be specially authorized by the Commissioner of Internal Revenue for that purpose, and shall be forfeited to the United States. And all raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax for the purpose of fraudulently selling such manufactured articles, or with design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or inclosure where such articles or raw materials are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made.

Seizure of property found in possession in fraud of revenue laws; forfeitures.

Property liable to forfeiture without any regard to the misconduct of owner. (United States v. Two Bay Mules, 36 Fed. Rep., 84.)

United States v. Distillery at Spring Valley (11 Blatch., 255; 18 Int. Rev. Rec., 59) and decisions cited under section 3281, p. 167.

Mixture or confusion of fraud spirits with others. (The Distilled Spirits (Harrington's), 11 Wall., 356; 13 Int. Rev. Rec., 193; 10 *ibid.*, 164. United States v. One Still, 5 Blatch., 403; 5 Int. Rev. Rec., 189.)

An acquittal in a criminal prosecution is a bar to a proceeding in rem when the offense is the same. (Coffee v. United States, 116 U. S., 436; 32 Int. Rev. Rec., 38.)

Burden of proof: There is a distinction between civil and criminal cases in respect to the degree or quantum of evidence necessary to justify the jury in finding their verdict. In civil cases their duty is to find for the party in whose favor it preponderates. Innocence is presumed in a criminal case until the contrary is proven; but the presumption of innocence as probative evidence is not applicable in civil cases nor in revenue seizures. (*Lilienthal's Tobacco v. United States*, 97 U. S., 237; 24 Int. Rev. Rec., 60.)

Proceedings for forfeiture are civil, not criminal proceedings. *United States v. Three Tons of Coal*, 21 Int. Rev. Rec., 251.)

Sales to evade tax; forfeiture.

SEC. 3454. Whenever any person who is liable to pay any tax upon any goods, wares, or merchandise, sells or causes or allows the same to be sold before the tax is paid to which said property is liable, with intent to avoid such tax, or in fraud of the internal-revenue laws, any debt contracted in such sales, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court. And if such goods, wares, or merchandise have been paid for, in whole or in part, the sum so paid shall be deemed forfeited, and any person who shall sue for the same in an action of debt shall recover from the seller the amount so paid, one-half to his own use and the other half to the use of the United States.

Disposing of or receiving empty stamped packages, etc.; penalties.

SEC. 3455. Whenever any person sells, gives, purchases, or receives any box, barrel, bag, vessel, package, wrapper, cover, or envelope of any kind, stamped, branded, or marked in any way so as to show that the contents or intended contents thereof have been duly inspected, or that the tax thereon has been paid, or that any provision of the internal-revenue laws has been complied with, whether such stamping, branding, or marking may have been a duly authorized act or may be false and counterfeit, or otherwise without authority of law, said box, barrel, bag, vessel, package, wrapper, cover, or envelope being empty, or containing anything else than the contents which were therein when said articles had been so lawfully stamped, branded, or marked by an officer of the revenue, he shall be liable to a penalty of not less than fifty nor more than five hundred dollars. And every person who makes, manufactures, or produces any box, barrel, bag, vessel, package, wrapper, cover, or envelope, stamped, branded, or marked, as above described, or stamps, brands, or marks the same, as hereinbefore recited, shall be liable to penalty as before provided in this section. And every person who violates the foregoing provisions of this section, with intent to defraud the revenue, or to defraud any person, shall be liable to a fine of not less than one thousand nor more than five thousand dollars, or to imprisonment for not less than six months nor more than five years, or to both, at the discretion of the court. And all articles sold, given, purchased, received, made, manufactured, produced, branded, stamped, or marked in violation of the provisions of this section, and all their contents,

Manufacturing, etc., such packages.

Verbal error corrected.

shall be forfeited to the United States.

A person can not buy a package containing distilled spirits, already stamped and branded, and take out the contents and put in other distilled spirits of a lower proof, without rendering the property subject to forfeiture. (*United States v. Nine Casks and Packages of Distilled Spirits*, 51 Fed. Rep., 191.)

SEC. 3456. If any distiller, rectifier, wholesale liquor-dealer, or manufacturer of tobacco or cigars, shall knowingly or willfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this Title prohibited, if there be no specific penalty or punishment imposed by any other section of this Title for the neglecting, omitting or refusing to do, or for the doing or causing to be done the thing required or prohibited, he shall pay a penalty of one thousand dollars; and if the person so offending be a distiller, rectifier, or wholesale liquor dealer, all distilled spirits or liquors owned by him or in which he has any interest as owner, and if he be a manufacturer of tobacco or cigars, all tobacco or cigars found in his manufactory shall be forfeited to the United States.

Penalty and forfeiture by distillers, rectifiers, wholesale liquor dealers and manufacturers of tobacco or cigars, for omitting things required, and for doing things forbidden.

Act Feb. 27, 1877. (19 Stat., 240.) Verbal error corrected.

United States v. Two hundred Barrels Whisky (95 U. S., 571; 24 Int. Rev. Rec., 3). United States v. One hundred and thirty-three Casks of Distilled Spirits (11 Int. Rev. Rec., 191). United States v. One thousand four hundred and twelve Gallons Distilled Spirits (10 Blatch., 428; 17 Int. Rev. Rec., 86). United States v. One Rectifying Establishment (11 Int. Rev. Rec., 45).

This section was not intended to cumulate or increase punishment. (United States v. Four thousand eight hundred Gallons of Spirits, 13 Int. Rev. Rec., 52).

Intent. (Felton v. United States, 96 U. S., 699; 24 Int. Rev. Rec., 252.)

SEC. 3457. In every case where any goods or commodities are forfeited under any internal-revenue law, all casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained such goods or commodities, respectively, shall be forfeited.

Package included in forfeiture of goods.

SEC. 3458. Any goods, wares, merchandise, articles, or objects which may be seized, under the provisions of section thirty-four hundred and fifty-three, by any collector or deputy collector, may, at the option of the collector, be delivered to the marshal of the district, and remain in the care and custody and under the control of said marshal, until he shall obtain possession by process of law. And the cost of seizure made before process issues shall be taxable by the court. And where any whisky or tobacco, or other article of manufacture or produce, requiring brands, stamps or marks of whatever kind to be placed thereon, shall be sold upon distraint, forfeiture, or other process provided by law, the same not having been branded, stamped, or marked, as required by law, the officer selling the same shall, upon sale thereof, fix or cause to be affixed the brands, stamps, or marks, so required, and deduct the expense thereof from the proceeds of such sale.

Goods seized may be delivered to marshal before process issues.

Cost of seizure.

Whisky, tobacco, etc., sold on distraint, forfeiture, etc., marks, brands, and stamps to be affixed by officer.

Stamping tobacco, snuff, or cigars sold under distraint or forfeited. (§ 3369, p. 245.)

Destruction of forfeited tobacco, snuff, or cigars which will not sell for a price equal to the tax. (§ 3369, p. 245.)

Provision where spirits will not sell for price equal to tax. (§§ 3334, p. 209, 3450, p. 342.)

Property sold under distraint. (§ 3191, p. 91.)

Payment of the tax on forfeited spirits by the marshal out of proceeds of sale discharges liability of sureties on warehouse bond for tax. (United States v. Ulrici, 111 U. S., 38; 30 Int. Rev. Rec., 111.)

The provision allowing the court to tax in favor of the collector the costs of seizure made before process issues may be properly construed to cover any necessary expenses of watching property seized by a collector for such time as shall necessarily elapse between the seizure by the collector and the seizure by the marshal under process; but it can not be extended to cover a charge for custody during an unreasonable delay. (Fifteen Empty Barrels, etc. (1867), 1 Ben., 125.)

Bonding per-
ishable goods
seized, etc.

SEC. 3459. When any property which is seized under the foregoing provisions of section thirty-four hundred and fifty-three is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense, the owner thereof, or the marshal of the district, may apply to the collector of the district to examine it; and if, in the opinion of the said collector, it shall be necessary that the said property should be sold to prevent such waste or expense, he shall appraise the same; and thereupon the owner shall have said property returned to him upon giving bond in such form as may be prescribed by the Commissioner of Internal Revenue, and in an amount equal to the appraised value, with such sureties as the collector shall deem good and sufficient, to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of said appraised value to the collector, marshal, or otherwise, as he may be ordered and directed by the court, which bond shall be filed by said collector with the United States district attorney for the district in which said proceedings in rem may be commenced: *Provided*, That in case said bond shall have been executed and the property returned before seizure thereof by virtue of the process aforesaid, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond, by personal service or publication, and in such manner and form as the court may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid. But if said owner shall neglect or refuse to give said bond, the collector shall issue to a deputy collector or to the marshal aforesaid an order to sell the same; and the deputy collector or marshal shall thereupon advertise and sell the said property at public auction in the same manner as goods may be sold on final execution in said district; and the proceeds of the sale, after deducting the reasonable costs of the seizure and sale, shall be paid to the court aforesaid, to abide its final order, decree, or judgment.

Sale for want
of bond.

See section 3331, p. 208, as to release of distilleries.

Proceedings on
seizure of goods
valued at \$500 or
less.

SEC. 3460. In all cases of seizure of any goods, wares, or merchandise, as being subject to forfeiture under any provision of the internal-revenue laws, which, in the opinion of the collector or deputy collector making the seizure, are of the appraised value of five hundred dollars or less, the said collector or deputy collector shall, except in cases otherwise provided, proceed as follows:

List and ap-
praisement.

First. He shall cause a list containing a particular description of the goods, wares, or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers, to be selected by him, who shall

be respectable and disinterested citizens of the United States residing within the collection-district wherein the seizure was made. Said list and appraisement shall be properly attested by the said collector or deputy collector and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar and fifty cents a day, to be paid in the manner provided by law for other necessary charges of collectors.

Second. If the said goods are found by the said appraisers to be of the value of five hundred dollars or less, the said collector or deputy collector shall publish a notice for three weeks, in some newspaper of the district where the seizure was made, describing the articles, and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Notice of seizure.

Third. Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the said collector or deputy collector a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of two hundred and fifty dollars, with sureties to be approved by the said collector or deputy collector, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the collector or deputy collector, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States district attorney for the district, and said attorney shall proceed thereon in the ordinary manner prescribed by law. Claim to be filed.
Bond of claimant.

Fourth. If no claim is interposed and no bond is given within the time above specified, the collector or deputy collector, as the case may be, shall give ten days' notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall sell the articles so seized at public auction, and, after deducting the expense of appraisement and sale, he shall deposit the proceeds to the credit of the Secretary of the Treasury. Sale of goods and disposal of proceeds.

Instructions as to the mode of procedure under this section are given in the Regulations, Series 7, No. 2, revised.

Provision relative to spirits which will not sell for price equal to the tax. (§ 3334, p. 209.)

SEC. 3461. Within one year after the sale of any goods, wares, or merchandise, as provided in the preceding section, any person claiming to be interested in the property sold may apply to the Secretary of the Treasury for a remission of the forfeiture thereof, or of any part thereof, and a restoration of the proceeds of the sale; and the said Secretary may grant the same upon satisfactory proof, to be furnished in such manner as he shall prescribe: *Provided*, That it shall be satisfactorily shown that the applicant, at the time of the seizure and sale of the said property, and during the intervening time, was absent, out of the United States, or in such circumstances as prevented him from Application for remission and return of proceeds; distribution.

knowing of the seizure, and that he did not know of the same; and also that the said forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of said property. If no application for such restoration is made within one year, as hereinbefore prescribed, the Secretary of the Treasury shall, at the expiration of the said time, cause the proceeds of the sale of the said property to be distributed according to law, as in the case of goods, wares, or merchandise condemned and sold pursuant to the decree of a competent court.

Search war-
rants.

SEC. 3462. The several judges of the circuit and district courts of the United States, and commissioners of the circuit courts, may, within their respective jurisdictions, issue a search-warrant, authorizing any internal-revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of the said premises.

Detection and
punishment of
frauds.

SEC. 3463. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law.

Moieties repealed, section 39, act of June 6, 1872. (17 Stat., 256.) "Sanborn contract," under act of May 8, 1872 (17 Stat., 69), was repealed June 22, 1874. (18 Stat., 192.)

Construction of offer of \$300 reward and Circular No. 99 and its revisions. (15 Op. Atty. Gen., 88 (Pierpont); *Williams v. United States*, 12 Ct. Clms., 193; *Briggs v. United States*, 15 Ct. Clms., 48.)

The payment of a reward to an officer for services within the scope of his official duties is contrary to public policy (*Matthews & Gunn v. United States*, 32 Ct. Clms., 123.)

The authority conferred upon the Attorney-General by the act of March 3, 1891 (26 Stat., 985), to offer rewards for the detection and prosecution of crimes against the United States, preliminary to the indictment, empowered him to authorize the marshal of the northern district of Florida to offer a reward for the arrest and delivery of a person accused of the commission of a crime against the United States in that district, the reward to be paid upon conviction; and a deputy marshal, who had complied with all the conditions of the offer and of the statute, was entitled to receive the amount of the reward offered. (*United States v. Matthews*, 173 U. S., 381.)

All officers of the United States, except in cases of smuggling in violation of the customs-revenue laws, are debarred from receiving any share of a fine.

Effect of repeal of act allowing moieties on informer's claim for information given prior to repeal. (*United States v. Connor*, 138 U. S., 61.)

Commissioner authorized to offer a reward for the recovery of taxes evaded. (15 Op. Atty. Gen., 133; 22 Int. Rev. Rec., 229.)

Authority of Commissioner to bind the Government by promising to pay for information. Informer who receives less than 10 per cent can not recover the difference in the Court of Claims. (*Green v. United States*, 17 C. Cls., 238; 28 Int. Rev. Rec., 208.)

Right of Commissioner and Secretary to fix amount of reward. (*E. D. Crane v. United States*, 34 Int. Rev. Rec., 414; 23 Ct. Clms., 94.)

As to marshal or deputy marshal receiving reward. A contract

to pay a reward for the arrest of a felon is valid if not made with a public officer or employee on whom the law imposes the duty of making such arrest, or with some officer or employee otherwise excluded from the right to receive such reward. (Hutsel Amarine's case, 2 Lawrence Dec., 545; 28 Int. Rev. Rec., 21.)

In the matter of the authority of persons employed under section 3463 to visit, enter into, and examine distilleries, etc. (4 Lawrence Dec., 60.)

Circular No. 300, relative to expenditures from appropriation for discovering violations of internal-revenue laws. (32 Int. Rev. Rec., 101.)

Rewards for information leading to the detection and punishment of persons violating internal-revenue laws.

(Circular, Int. Rev., No. 99, 4th Revision, Vol. 2, Treas. Dec. (1899), No. 21856.)

[SEC. 3463a.] [Extract from appropriation bill (sundry civil) for the fiscal year ending June 30, 1900, act of March 3, 1899 (30 Stat., 1091).]

* * * Punishment for violations of internal-revenue laws: For detecting and bringing to trial and punishment persons guilty of violating the internal-revenue laws or conniving at the same, including payments for information and detection of such violations, seventy-five thousand dollars; and the Commissioner of Internal Revenue shall make a detailed statement to Congress once in each year as to how he has expended this sum, and also a detailed statement of all miscellaneous expenditures in the Bureau of Internal Revenue for which appropriation is made in this Act.

Appropriation for detecting frauds.

Statement to Congress.

A provision similar to the above respecting statements to Congress has been in appropriation bills as to the fraud fund since the act of June 19, 1878 (20 Stat., 187), and as to miscellaneous expenses of the Bureau since the act of June 15, 1880 (21 Stat., 20).

The use of words "once in each year," in the second part of the paragraph, would seem to indicate a permanent character.

The concluding part of the paragraph relates apparently only to the miscellaneous expenditures for the particular year for which appropriation is made by this act. (Note in Sup. R. S., vol. 2, p. 121.)

It is the right of every private citizen of the United States to inform a marshal of the United States, or his deputy, of a violation of the internal-revenue laws of the United States; this right is secured to the citizen by the Constitution of the United States; and a conspiracy to injure, oppress, threaten, or intimidate him in the free exercise or enjoyment of this right, or because of his having exercised it, is punishable under section 5508 R. S. (*In re Quarles and Butler*, 158 U. S., 532.)

In *Worthington v. Scribner* (109 Mass., 487) the principle was laid down that it is the duty of every citizen to communicate to his Government any information which he has of the commission of an offense against its laws; and that a court of justice will not compel or allow such information to be disclosed, either by the subordinate officer to whom it is given, by the informer himself, or by any other person, without the permission of the Government, the evidence being excluded not for the protection of the witness or of the party in the particular case, but upon general grounds of public policy, because of the confidential nature of such communications. The authorities are collected and reviewed in that case. (*Vogel v. Gruaz*, 110 U. S., 311.)

SEC. 3464. The privilege of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, which now does or hereafter shall exist by provision of law, shall be extended, under such regulations as the Secretary of the Treasury may prescribe, to all

Purchasing for the Government goods subject to tax.

articles of domestic production which are subject to tax by the provisions of this Title.

The provisions of this section (3464 R. S.) were not repealed by the Tariff Act of October 1, 1890. Op. Solicitor of the Treasury, Nov. 11, 1891.

The immunity from liability to tax is limited to the actual contents of the packages. (Op. Atty. Gen.; 30 Int. Rev. Rec., 94; *ibid.*, 101; 33 Int. Rev. Rec., 269.)

Revised circular, July 14, 1898, concerning the withdrawal of alcohol from bond for scientific purposes for the use of the United States, free of tax. (Department Circular No. 138; Vol. 2, Treas. Dec. (1898), No. 19664.)

Construction of
act March 2, 1833
(4 Stat., 632).

SEC. 3465. An act entitled "An act further to provide for the collection of duties on imports," passed March second, eighteen hundred and thirty-three, shall not be so construed as to apply to cases arising under an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," passed June thirtieth, eighteen hundred and sixty-four, or any act in addition thereto or in amendment thereof, nor to any case in which the validity or interpretation of said act or acts shall be in issue.

Hornthall v. The Collector (9 Wall., 566); The Assessor v. Osbornes, (9 Wall., 577).

The words "revenue laws," where used broadly and generally, include internal revenue as well as customs laws. (United States v. Dustin, 15 Int. Rev. Rec., 30.)

No inference or presumption of a legislative construction is to be drawn by reason of the title under which any particular section is placed. (§ 5600, R. S.)

ACT AUGUST 13, 1894 (28 Stat., 279).

AN ACT Relative to recognizances, stipulations, bonds, and undertakings, and to allow certain corporations to be accepted as surety thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any recognizance, stipulation, bond, or undertaking conditioned for the faithful performance of any duty, or for doing or refraining from doing anything in such recognizance, stipulation, bond, or undertaking specified, is by the laws of the United States required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by a corporation incorporated under the laws of the United States, or of any State having power to guarantee the fidelity of persons holding positions of public or private trust, and to execute and guarantee bonds and undertakings in judicial proceedings: *Provided,* That such recognizance, stipulation, bond, or undertaking be approved by the head of department, court, judge, officer, board, or body executive, legislative, or judicial required to approve or accept the same. But no officer or person having the approval of any bond shall exact that it shall be furnished by a guarantee company or by any particular guarantee company.

Bonds executed and guaranteed solely by a corporation, when sufficient.

Sufficiency of justification and acknowledgment on Form 400 of guaranty and surety companies when sureties on distillers' warehousing bonds. (Vol. 1, Treas. Dec. (1898), No. 19059.)

SEC. 2. That no such company shall do business under the provisions of this Act beyond the limits of the State or Territory under whose laws it was incorporated and in which its principal office is located, nor beyond the limits of the District of Columbia, when such company was incorporated under its laws or the laws of the United States and its principal office is located in said District, until it shall by a written power of attorney appoint some person residing within the jurisdiction of the court for the judicial district wherein such suretyship is to be undertaken, who shall be a citizen of the State, Territory, or District of Columbia, wherein such court is held, as its agent, upon whom may be served all lawful process against such company, and who shall be authorized to enter an appearance in its behalf. A copy of such power of attorney, duly certified and authenticated, shall be filed with the clerk of the district court of the United States for such district at each place where a term of such court is or may be held, which copy, or a certified copy thereof, shall be legal evidence in all controversies arising under this Act. If any such agent shall be removed, resign, or die, become insane, or otherwise incapable of acting, it shall be the duty of such company to appoint another agent in his place as hereinbefore prescribed, and until such appointment shall have been made, or during the absence of any agent of such company from such district, service of process may be upon the clerk of the court wherein such suit is brought, with like effect as upon an agent appointed by the company. The officer executing such process upon such clerk shall immediately transmit a copy thereof by mail to the company, and state such fact in his return. A judgment, decree, or order of a court entered or made after service of process as aforesaid shall be as valid and binding on such company as if served with process in said district.

Power of attorney.

A copy of power attorney to be filed with clerk of the district court.

When agent removed, etc.

Service of process.

Judgment.

Copy of charter or articles of incorporation, etc., to be filed with U. S. Atty.-Genl.

SEC. 3. That every company before transacting any business under this Act shall deposit with the Attorney-General of the United States a copy of its charter or articles of incorporation, and a statement signed and sworn to by its president and secretary showing its assets and liabilities. If the said Attorney-General shall be satisfied that such company has authority under its charter to do the business provided for in this Act, and that it has a paid up capital of not less than two hundred and fifty thousand dollars, in cash or its equivalent, and is able to keep and perform its contracts, he shall grant authority in writing to such company to do business under this Act.

SEC. 4. That every such company shall, in the months of January, April, July, and October of each year, file with the said Attorney-General a statement, signed and sworn to by its president and secretary, showing its assets and liabilities, as is required by section three of this Act. And the said Attorney-General shall have the power, and it shall be his duty, to revoke the authority of any such company to transact any new business under this Act whenever in his judgment such company is not solvent or is conducting its business in violation of this Act. He may institute inquiry at any time into the solvency of said com-

The company to file statement during the year, showing its assets and liabilities.

pany and may require that additional security be given at any time by any principal when he deems such company no longer sufficient security.

Company may
be sued in any
U. S. court.

SEC. 5. That any surety company doing business under the provisions of this Act may be sued in respect thereof in any court of the United States which has now or hereafter may have jurisdiction of actions or suits upon such recognizance, stipulation, bond, or undertaking, in the district in which such recognizance, stipulation, bond, or undertaking was made or guaranteed, or in the district in which the principal office of such company is located. And for the purposes of this Act such recognizance, stipulation, bond, or undertaking shall be treated as made or guaranteed in the district in which the office is located, to which it is returnable, or in which it is filed, or in the district in which the principal in such recognizance, stipulation, bond, or undertaking resided when it was made or guaranteed.

Neglect or refusal to pay judgment or decree, etc.

SEC. 6. That if any such company shall neglect or refuse to pay any final judgment or decree rendered against it upon any such recognizance, stipulation, bond, or undertaking made or guaranteed by it under the provisions of this Act, from which no appeal, writ of error, or supersedeas has been taken, for thirty days after the rendition of such judgment or decree, it shall forfeit all right to do business under this Act.

Company estopped to deny its corporate power, etc.

SEC. 7. That any company which shall execute or guarantee any recognizance, stipulation, bond, or undertaking under the provisions of this Act shall be estopped in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute or guarantee such instrument or assume such liability.

Failure to comply with provisions of this act. Forfeiture.

SEC. 8. That any company doing business under the provisions of this Act which shall fail to comply with any of its provisions shall forfeit to the United States for every such failure not less than five hundred dollars nor more than five thousand dollars, to be recovered by suit in the name of the United States in the same courts in which suit may be brought against such company under the provisions of this Act, and such failure shall not affect the validity of any contract entered into by such company.

OFFICIAL BONDS.

[Extract from legislative, executive, and judicial appropriation act, approved March 2, 1895 (28 Stat., 807).]

Bonds of collectors of internal revenue to be filed with Secretary of Treasury.

SEC. 5. * * * * * Hereafter all bonds of the Treasurer of the United States, collectors of internal revenue, collectors, naval officers, surveyors, and other officers of the customs, either as such officers or as disbursing officers of the Treasury, bonds of the Secretary of the Senate, Clerk of the House of Representatives, and the Sergeant-at-Arms of the House of Representatives, and all such bonds now on file in the office of the Comptroller of the Treasury, shall be transmitted to the Secretary of the Treasury and filed as he may direct; and the duties now required by law of the Comptroller of the Treasury in re-

gard to such bonds, as the successor of the Commissioner of Customs and First Comptroller of the Treasury, shall hereafter be performed by the Secretary of the Treasury.

Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and every officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.

Official bonds to be examined at least every two years.

Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary. In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor: *Provided*, That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States: *Provided further*, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal: *And provided further*, That nothing in this section shall be construed to repeal or modify section thirty-eight hundred and thirty-six of the Revised Statutes of the United States.

Bonds renewed or strengthened every four years or oftener.

Period of liability covered on official bonds.

Sec. 3836, R. S., not repealed nor modified. Postal bonds not affected.

Notice to sureties and statute of limitations, p. 386.

SEC. 72. *Act of August 28, 1894 (28 Stat., 509), repealing and saving clause.* All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed, but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not been passed. All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act shall not be affected thereby; and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, may be commenced and

Repeal of existing laws not to affect any act done or right accrued, or suit commenced prior to the repeal.

Liabilities incurred prior to the passage of this act.

Limitations.

Civil or criminal suits.

Sec. 3058, as amended, not repealed.

prosecuted within the same time and with the same effect as if this Act had not been passed: *And provided further*, That nothing in this Act shall be construed to repeal the provisions of section three thousand and fifty-eight of the Revised Statutes as amended by the Act approved February twenty-third, eighteen hundred and eighty seven, in respect to the abandonment of merchandise to underwriters or the salvors of property, and the ascertainment of duties thereon.

Former laws made applicable to war revenue act.

Former laws made applicable.

SEC. 31. *Act of June 13, 1898 (30 Stat., 448)*. That all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed are hereby made applicable to this Act.

When the war revenue act took effect.

Act of June 13, 1898, to take effect.

SEC. 51. *Act of June 13, 1898 (30 Stat., 448)*. That this Act shall take effect on the day next succeeding the date of its passage except as otherwise specially provided for.

A P P E N D I X.

CONTAINING LAWS OF A GENERAL NATURE AND MISCELLANEOUS PROVISIONS APPLICABLE TO THE ADMINISTRATION OF THE INTERNAL-REVENUE LAWS.

CHAPTER 1 (P. 357).

SUITS AND PROSECUTIONS, JURISDICTION, PRACTICE, EVIDENCE, LIENS, LIMITATIONS, ETC.

Jurisdiction of district courts.	Costs, when paid by defendant.
Jurisdiction of circuit courts.	Laws of the States, rules of decision, etc.
Suits for penalties, forfeitures, and taxes.	Proceedings on execution. State laws.
Removal of suits against officers from State to United States circuit courts.	Act to regulate liens of judgments and decrees of United States courts.
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CHAPTER 2 (P. 373).

U. S. ATTORNEYS, DUTIES AS TO PROSECUTIONS, REPORTS, COMPENSATION, CLERKS OF COURTS, ETC.

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Compensation as attorney or counsel only allowed in certain cases.	Compensation of district attorneys, etc. Sections 6 and 7, act of May 28, 1896.
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CHAPTER 3 (P. 377).

DUTIES OF OFFICERS CHARGED WITH RECEIVING OR DISBURSING PUBLIC MONEYS, PENALTIES FOR EMBEZZLEMENTS, PROCEEDINGS AGAINST DELINQUENT OFFICERS, ETC.

Moneys to be deposited without deduction.	Embezzlement; penalty for requiring receipt for larger sum than that actually paid.
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Distress warrant.	Refusal to pay any draft, etc., prima facie evidence of embezzlement.
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Unlawfully receiving public money.
 Embezzlement by internal-revenue officers and assistants where offense is not otherwise punishable.
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 Penalty for conspiracy.

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 Certain business forbidden to clerks in the Treasury Department.
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CHAPTER 1.

SUITS AND PROSECUTIONS—JURISDICTION—PRACTICE—EVIDENCE—LIENS—
LIMITATIONS—COMPROMISES AND REMISSIONS.

Jurisdiction of district courts.

SEC. 563. The district courts shall have jurisdiction as follows:

First. Of all crimes and offenses cognizable under the authority of the United States, committed within their respective districts, or upon the high seas, the punishment of which is not capital, except in the cases mentioned in section fifty-four hundred and twelve, Title "Crimes."

* * * * *

Third. Of all suits for penalties and forfeitures incurred under any law of the United States.

* * * * *

Fifth. Of all suits in equity to enforce the lien of the United States upon any real estate for any internal-revenue tax, or to subject to the payment of any such tax any real estate owned by the delinquent, or in which he has any right, title, or interest. (§ 3207, p 97.)

United States v. Shaw (39 Fed. Rep., 433).

* * * * *

Eighth. * * * And of all seizures on land and on waters not within admiralty and maritime jurisdiction. * * *

Coffey v. United States (116 U. S., 427; 117 *Id.*, 233).

Jurisdiction of circuit courts.

SEC. 629. The circuit courts shall have original jurisdiction as follows:

* * * * *

Fourth. * * * Of all causes arising under any law providing internal revenue. * * *

This clause was not repealed by the act of March 3, 1875 (18 Stat., 470), or by the act of March 3, 1887 (24 Stat., 552), defining the jurisdiction of the circuit courts, and these courts have jurisdiction in suits arising under the revenue laws, although the amount in dispute is less than \$2,000. (*Ames v. Hager*, 36 Fed. Rep., 129; *Commissioners v. Buckner*, 48 Fed. Rep., 533.)

Twentieth. Exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offenses cognizable therein.

See acts of March 3, 1887 (24 Stat., 552), and as to jurisdiction of circuit courts, act of August 13, 1888 (25 Stat., 433); 34 Int. Rev. Rec., 335).

AN ACT To correct the enrollment of an act approved March third, eighteen hundred and eighty-seven, entitled "An act to amend sections one, two, three, and ten of an act to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from the State courts, and for other purposes, approved March third, eighteen hundred and seventy-five.

SEC. 1. *Act of Aug. 13, 1888 (25 Stat., 433).* That the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, or treaties

made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners, * * *

Sundry civil appropriation act, approved March 3, 1899 (30 Stat., 1116).

It shall be the duty of the commission appointed to revise and codify the criminal and penal laws of the United States to revise and codify the laws concerning the jurisdiction and practice of the courts of the United States, including the Judiciary Act, the acts in amendment thereof and supplementary thereto, and all acts providing for the removal, appeal and transfer of causes.

Exclusive jurisdiction of courts of United States.

SEC. 711. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several States:

First. Of all crimes and offenses cognizable under the authority of the United States.

Second. Of all suits for penalties and forfeitures incurred under the laws of the United States.

Third. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it.

Fourth. Of all seizures under the laws of the United States on land or on waters not within admiralty and maritime jurisdiction.

* * * * *

The Supreme Court is the only court of the United States which derives any part of its power directly from the Constitution. The circuit and district courts of the United States are, by authority of the Constitution, the creatures of the national legislature, having such jurisdiction, and only such, as Congress has been pleased to confer upon them, and having no common law jurisdiction, though drawing upon the common law for modes of procedure and practice when necessary to carry into effect the jurisdiction given by statute. (*United States v. Cultus Joe*, 15 Int. Rev. Rec., 58.)

In general a crime against the laws of the United States is not cognizable in a State court. (*Ex parte Houghton*, 27 Int. Rev. Rec., 273.)

The same offense may be made punishable both under the laws of a State and of the United States; and over such offenses the State and Federal courts have concurrent jurisdiction. (*United States v. Wells*, 15 Int. Rev. Rec., 56.)

The same act may constitute an offense against the United States and against a State, subjecting the guilty party to punishment under the laws of each government; and may embrace two or more offenses. (*Cross v. North Carolina*, 132 U. S., 131, and cases cited. And see *Teal v. Felton*, 12 How., 284, 292; *Crossley v. California*, 168 U. S., 641.)

A suit against an internal-revenue collector to recover taxes alleged to have been illegally collected is cognizable in the United States circuit court, both under section 629, giving that court jurisdiction of causes arising under any law providing internal revenue, and under act of March 3, 1887, giving it jurisdiction of causes arising under the laws of the United States. (*Commissioners of Sinking Fund of Louisville v. Buckner* (1891), circuit court, 48 Fed. Rep., 533. See *Insurance Co. v. Ritchie*, 5 Wall., 541; *City of Philadelphia v. Collector*, 5 Wall., 570; *Hornthal v. Collector*, 9 Wall., 560; *Assessor v. Osborne*, 9 Wall., 567.)

A State court has no authority to enjoin the proceedings of a Federal court. (*Central National Bank, Boston, v. Hazard*, 49 Fed. Rep., 293.)

Conflicting State and Federal jurisdiction. (*Booth v. St. Louis Fire Engine Manufacturing Company*, 40 Fed. Rep., 1.)

Offenses begun in one district and completed in another.

SEC. 731. When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of,

tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein.

The word "district," in the second line, is erroneously printed "circuit" in the second edition Revised Statutes, 1878. It is "district" in the original act of March 2, 1867 (14 Stat., 484), and in the first edition of the Revised Statutes (*Horner v. United States*, 143 U. S., 212).

Suits for taxes, penalties, or forfeitures to be brought in the name of the United States.

SEC. 919. All suits for the recovery of any duties, imposts, or taxes, or for the enforcement of any penalty or forfeiture provided by any act respecting imports or tonnage, or the registering and recording or enrolling and licensing of vessels, or the internal revenue, or direct taxes, and all suits arising under the postal laws, shall be brought in the name of the United States.

Where suits for penalties, forfeitures, and taxes are to be brought.

SEC. 732. All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue or in the district where the offender is found.

SEC. 733. Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs or in the district where the delinquent resides.

SEC. 3213. * * * All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam* or otherwise, before any circuit or district court of the United States for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action.

United States v. New York, New Haven and Hartford Railroad Company (10 Ben., 144; 24 Int. Rev. Rec., 341). *The Dollar Savings Bank v. United States*, 19 Wall., 227; 22 Int. Rev. Rec., 310).

Jurisdiction in case of actions on deputy collectors' bonds (§ 3148, p. 62).

Officers suffering injuries may maintain suit for damages in the United States circuit court of the district where the party resides or may be found. (§ 3171, p. 78.)

Residence of a corporation. (*Booth et al. v. St. Louis Fire Engine Manufacturing Company*, 40 Fed. Rep., 1.)

Penal offenses created by the statute, whether prosecuted by indictment or information, must be accurately and clearly described in the pleadings for recovery of the penalty. (*United States v. Mann*, 24 Int. Rev. Rec., 20; 95 U. S., 580.)

When the crime is a statutory one, the offense must be charged with precision and certainty. (*Ledbetter v. United States*, 170 U. S., 606.)

Persons not to be arrested in one district for trial in another in civil actions.

SEC. 1. *Act of August 13, 1888 (25 Stat., 493), amending act of March 3, 1875 (18 Stat., 470).* But no person shall be arrested in one district for trial in another in any civil action before a circuit or district court; and no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit

shall be brought only in the district of the residence of either the plaintiff or the defendant. * * *

Suit against foreign corporations doing business in a State. (*Wilson Packing Company v. Hunter*, 25 Int. Rev. Rec., 137.)

Foreign corporations, where to be sued. (*Mohr and Mohr Distilling Company v. Sundry Insurance Companies*, 28 Int. Rev. Rec., 218.)

Service of process on nonresident defendant on compulsory attendance illegal. (*United States v. Bridgman*, 26 Int. Rev. Rec., 139.) Also where fraud is used to induce defendant to come within jurisdiction of court (*Steiger v. Bonn*, 26 Int. Rev. Rec., 365). A party going into another State as witness exempt from process (*Brooke v. Farwell*, 26 Int. Rev. Rec., 355).

Arrests without warrant. (14 Int. Rev. Rec., 27; 24 *ibid.*, 349, 378.)

SECS. 737, 740 provide for cases where there are two or more defendants residing in different districts.

Removal of suits or prosecutions against officers from State courts to United States circuit courts

SEC. 643, *as amended by act of February 8, 1894 (28 Stat., 36)*. When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; * * * the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the circuit court next to be holden in the district where the same is pending, upon the petition of such defendant to said circuit court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution, and be verified by affidavit; and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him, and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said circuit court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the circuit court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court.

When the suit is commenced in the State court by summons, subpoena, petition, or another process except capias, the clerk of the circuit court shall issue a writ of certiorari to the State court, requiring it to send to the circuit court the record and proceedings in the cause.

When it is commenced by capias, or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of habeas corpus cum causa, a duplicate of which shall be delivered to the clerk of the State court, or left at his office, by the marshal of the district, or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the circuit court, and any further proceedings, trial, or judgment therein in the State court shall be void.

And if the defendant in the suit or prosecution be in actual custody

on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the circuit court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the circuit court that no copy of the record and proceedings therein in the State court can be obtained, the circuit court may allow and require the plaintiff to proceed de novo, and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said circuit court. On failure of the plaintiff so to proceed, judgment of non prosequitur may be rendered against him, with costs for the defendant.

Under this section, which declares that after removal "any further proceeding, trial, or judgment therein in the State court shall be void," an indictment found in a State court after the removal of the cause to the United States circuit court was null; and where, upon *habeas corpus cum causa*, it appears that the prisoners were in the discharge of their duty as revenue officers of the United States when the act was committed, and were without fault, they will be discharged (*State of North Carolina v. Kirkpatrick et al.* (1890); 42 Fed. Rep., 689; 36 Int. Rev. Rec., 133).

This act is constitutional. (*Sup. Court, State of N. C.*; *State v. Hoskins et al.*; 23 Int. Rev. Rec., 263; 77 N. C. 530.)

Removal of criminal case. (*Tennessee v. Davis*, 100 U. S., 257; 26 Int. Rev. Rec., 90.)

Case of a guard acting in aid of a marshal. (*Davis v. South Carolina*, 107 U. S., 597; 29 Int. Rev. Rec., 189.)

Act of March 3, 1875 (18 Stat., 470): "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes." This act does not supersede section 643. (*Venable v. Richards*, 105 U. S., 636; 28 Int. Rev. Rec., 162.)

Section 5, act of March 3, 1887 (24 Stat., 552), amending the act of March 3, 1875, above referred to. Nothing in this act shall be held to repeal or affect any jurisdiction or right mentioned in section 643.

Act of August 13, 1888 (25 Stat., 433): "An act to correct the enrollment of the act of March 3, 1887." (34 Int. Rev. Rec., 335.)

Habeas corpus: The writ can not be sustained if issued by State court to inquire into detention of a person by a United States officer. Conflict between State and United States courts. (*Tarble's Case*, 13 Wall., 397; 15 Int. Rev. Rec., 135; dissenting opinion of Chief Justice Chase, 15 *ibid.*, 193.)

A summary proceeding by a landlord to recover from a lessee possession of premises used as a bonded warehouse, to which proceeding the collector of internal revenue and a United States storekeeper are made parties defendant, and described as undertenants holding over, is removable to a Federal court under this section. (*Gallatin v. Sherman et al.*, Circuit Court S. D. New York, (1896,) 77 Fed. Rep., 337.)

When a prosecution can be deemed to be commenced within the meaning of the acts of Congress authorizing removal from State courts to United States courts for trial. (*Virginia v. Paul*, 148 U. S., 107.)

A criminal prosecution is commenced as soon as a warrant has been issued and is then removable into the United States circuit court. (*State of Georgia v. Bolton*, 11 Fed. Rep., 217.)

Charges which may be joined in one indictment.

SEC. 1024. When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated.

Although section 3397 designates as felonies some of the offenses specified in it, and omits to designate others as felonies, offenses of each class, which arise out of one and the same transaction, may, under section 1024, be charged

in one indictment in different counts. (*United States v. Louis Jacoby*, 12 Blatch., 491.)

Several charges may be joined in one indictment in separate counts, but the accused shall not be tried at the same time for different offenses; and an indictment charging the accused in one count with carrying on the business of a retail liquor dealer without having paid the special tax, and in another with dealing in manufactured tobacco without payment of the special tax, will be quashed. (*United States v. Gaston*, 28 Fed. Rep., 848.)

The subject of the joinder of distinct offenses in one indictment against the same person fully examined. (*Pointer v. United States*, 151 U. S., 396; *Williams v. United States*, 168 U. S., 390; *United States v. Maguire*, 22 Int. Rev. Rec., 146.)

Offenders against the United States, how arrested and removed for trial—Warrants may be issued by State officers.

SEC. 1014. For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

Marshal can not be aided by the military. (§ 15, act of June 18, 1878, (20 Stat., 152); 16 Op. Atty. Gen., 162.)

A person arrested in one district may be held to bail for trial in another upon a certified copy of an indictment which has been found against him in such other district. (*United States v. Pope*, 24 Int. Rev. Rec., 29.)

A preliminary examination before a commissioner is not a proceeding in court. (*Todd v. United States*, 158 U. S., 278.)

Powers of United States commissioner. (*United States v. Berry*, 26 Int. Rev. Rec., 405.)

The powers exercised by a United States commissioner in the examination of a person charged with an offense are those common to all examining magistrates. To authorize him to commit he need not be convinced of the guilt of the accused, but the proof should be such as to afford good reason to believe that the offense was committed, and by the accused; otherwise it is his duty to discharge. (*Ex parte Jones*, 96 Fed. Rep., 200.)

Witnesses: No exclusion on account of color or interest provided, etc.—Laws of the State constitute rules of decision as to competency.

SEC. 858. In the courts of the United States no witness shall be excluded in any action on account of color, or in any civil action because he is a party to or interested in the issue tried: *Provided*, That in actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other, as to any transaction with, or statement by, the testator, intestate, or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court. In all other respects, the laws of the State in which the court is held

shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty.

Potter, executor, *v.* National Bank. (102 U. S., 163; 26 Int. Rev. Rec., 403.)

Expert testimony: The law which regulates the fees of witnesses refers to those who can be compelled involuntarily to testify, not to experts. (In the matter of Smith, paymaster, U. S. Army, 35 Int. Rev. Rec., 64.)

The provision of section 858 that "the laws of the State in which the court is held shall be the rules of the decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty" has no application to criminal trials. (*Logan v. United States*, 144 U. S., 263.)

Persons charged with crime can be witnesses in their own behalf.

Act of March 16, 1878. (20 Stat., 30.)

That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors, in the United States courts, Territorial courts, and courts martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness.

And his failure to make such request shall not create any presumption against him.

Accomplices used as witnesses; rule as to prosecution. (*United States v. Ford, Whisky Cases*, 99 U. S. (9 Otto,) 594; 25 Int. Rev. Rec., 127.)

The evidence of an accomplice is competent. If corroborated by other witnesses, credit is to be given to it. (*United States v. Whalan et al.*, 7 Int. Rev. Rec., 161; *United States v. Callicott*, 7 *ibid.*, 179.)

Production of books, papers, etc., in suits other than criminal.

SEC. 5. *Act of June 22, 1874.* (18 Stat., 187.) That in all suits and proceedings other than criminal arising under any of the revenue-laws of the United States, the attorney representing the Government, whenever, in his belief, any business-book, invoice, or paper, belonging to or under the control of the defendant or claimant, will tend to prove any allegation made by the United States, may make a written motion, particularly describing such book, invoice, or paper, and setting forth the allegation which he expects to prove; and thereupon the court in which suit or proceeding is pending may, at its discretion, issue a notice to the defendant or claimant to produce such book, invoice, or paper in court, at a day and hour to be specified in said notice, which, together with a copy of said motion, shall be served formally on the defendant or claimant by the United States marshal by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in the same court are served; and if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegation stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the court. And if produced, the said attorney shall be permitted, under the direction of the court, to make examination (at which examination the defendant or claimant, or his agent, may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegation aforesaid, and may offer the same in evidence on behalf of the United States.

But the owner of said books and papers, his agent or attorney, shall have, subject to the order of the court, the custody of them, except pending their examination in court as aforesaid.

This act not repugnant to the Constitution. (*United States v. Three Tons of Coal*, 21 Int. Rev. Rec., 251.)

The fifth section of the act of June 22, 1874, applies to proceedings under the internal-revenue laws as well as the customs-revenue laws. The act is constitutional. (*United States v. Distillery No. 28 and Other Property*, 21 Int. Rev. Rec., 366.)

A compulsory production of a person's private papers to be used as evidence against him in a proceeding to forfeit his property for alleged fraud against the revenue laws is an "unreasonable search or seizure" within the meaning of the fourth amendment to the Constitution. (*Boyd v. United States*, 116 U. S., 617; 32 Int. Rev. Rec., 62.)

The power to compel the production of books and papers covers such documents only as would be, "if produced, competent material evidence for the party applying therefor." It does not permit the inquisition into private records on the mere possibility that something may be found to refresh the recollection of a witness, such records not being in themselves relevant to the case. (*United States v. S. J. Tilden*, 25 Int. Rev. Rec., 352.)

Section 724, R. S., as to power to produce books and papers in action at law.

Disclosures of witnesses not to be used against them in criminal proceedings.

SEC. 860. No pleading of a party, nor any discovery or evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture: *Provided*, That this section shall not exempt any party or witness from prosecution and punishment for perjury committed in discovering or testifying as aforesaid.

No person shall be compelled in any criminal case to be a witness against himself. Fifth amendment to Constitution. (*In re Mark Strouse*, 11 Int. Rev. Rec., 182; *In re Phillips*, 10 Int. Rev. Rec., 107.)

A person may be compelled to testify to matters tending to criminate himself, but no use can be made of such testimony against the witness in a criminal proceeding. (*United States v. Brown et al.*, 13 Int. Rev. Rec., 127.)

Certified copies of papers admissible as evidence.

SEC. 882. Copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under the seals of such Departments, respectively, shall be admitted in evidence equally with the originals thereof.

As to transcripts from books in suits against delinquent officers. (§§ 886, 887, p. 385.)

The proper mode of proving papers on file in the Departments is by procuring certified copies. (*Barnes v. Schneider*, 9 Wall., 253.)

Documents not official do not by the mere fact of certification become so authenticated as to entitle them to be read in evidence. (*Blook v. United States*, 7 Ct. Clms., 406.)

Officers of the Executive Departments can not be required to remove records or papers filed therein by subpoena *duces tecum*. (5 Lawrence Dec., 446.)

In the matter of the application of a private person for a certified copy of records and files of Department. (30 Int. Rev. Rec., 382; see also Circular of Secretary of Treasury, dated Aug. 5, 1889; see rule 12, Dep. Cir. No. 148, Sept. 27, 1893.)

RULE XII.—No information in regard to transactions of an official character in this Department is to be communicated to anyone not authorized to receive it.

No information in regard to the claim of any person which has ever been filed in the Department is to be given to any other person unless proper authority is shown by way of power of attorney, or by letters of administra-

tion, or otherwise in a manner satisfactory to the Secretary, or an assistant secretary, or to the head of the proper bureau in the Department, or chief of the proper division in the Secretary's office.

No account, document, or paper of any kind on file in the Department shall on any occasion be withdrawn by agents, attorneys, or other persons; and no copies of any such accounts or papers shall be furnished to any person, except upon application to, and with the previous written consent of, the Secretary, one of the assistant secretaries, or the head of the proper bureau, and are to be furnished only to such persons as may have a personal material interest in the subject-matter of the papers, or at their request. An affidavit setting forth the interest of the applicant, and showing the reason why and the purpose for which copies are desired, must be submitted with each application for the same.

In all cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only, and on a rule of the court requesting the Secretary of the Treasury to furnish the same.

Exceptions to this rule will be made only on the written order of the Secretary, or of an assistant secretary. (See Rule 10, Rules and Regulations of the Treasury Department, August 6, 1897.)

The records in the office of collector of customs respecting the entry, liquidation and payment of duties are so far public records that the importer has a right to inspect them when they relate to his importations. (*United States v. Benjamin H. Hutton and Charles G. Landon*, 25 Int. Rev. Rec., 57.)

Privileged communications.—Official correspondence between the Commissioner of Internal Revenue and a district attorney, in relation to cases of violation of the internal-revenue laws and to prosecutions thereunder, belong to that class of communications which, on grounds of public policy, are regarded as privileged, and the production of which in evidence, in a suit between private parties, the law will not enforce.

A subpoena duces tecum, issued by a State court, was served upon a district attorney, requiring him to appear as a witness in a private suit and bring with him all letters and telegrams received from the Commissioner of Internal Revenue relative to certain causes then pending in a United States court on indictments under the internal-revenue laws: *Advised*, That it would be proper for the attorney to appear before the State court in obedience to the writ, and there object to produce the papers on the ground that they are privileged, if, in his judgment or in that of the Commissioner, their production would be prejudicial to the public interests. (15 Op. Atty. Gen., 378; 23 Int. Rev. Rec., 341.)

Official communications privileged from disclosure on the ground of public policy. (*Gardner v. Anderson*, 22 Int. Rev. Rec., 41.)

Privileged records, documents, or communications. (*Shattuc v. McArthur*, 25 Fed. Rep., 137, note 2; 15 Op. Atty. Gen., 378, 415, 562; 16 *ibid.*, 24; 24 Int. Rev. Rec., 178.)

A deputy collector of internal revenue can not be compelled to testify, in a criminal proceeding in a State court, as to statements made to him by an applicant for a retail liquor dealer's special-tax stamp, which statements were made for the purpose of being reduced to writing and embodied in the records of the internal-revenue office. To divulge such statements would be to divulge the contents of the records themselves, which is forbidden by the internal-revenue regulations.

The Federal courts have jurisdiction, under section 753, to issue the writ for the purpose of releasing a deputy revenue collector from imprisonment for alleged contempt of a State court in refusing to testify to the contents of the records of the internal-revenue office. (*In re Huttman*, 70 Fed. Rep., 700; 41 Int. Rev. Rec., 477.)

An instruction issued by the Commissioner of Internal Revenue directing collectors and their deputies to refuse to produce, in criminal prosecutions of liquor dealers in the State courts, the returns made to the collectors, or the lists showing payments of Federal liquor taxes, or to give information derived from official sources as to the fact of such payments, is valid, and in accordance with the Federal laws.

A State has no right to Federal instruments of purely Federal character for proof, unless they are left within its reach. (*In re Weeks*, Vermont (1897), 82 Fed. Rep., 729; 43 Int. Rev. Rec., 393.)

There is no statute of the United States requiring or permitting a collector of internal revenue to make or certify copies of reports on file in his office, and a State has no authority, either in its sovereign capacity or as a litigant, to impose such duty upon him. (*In re Comingore*, Collector (1899), 96 Fed. Rep., 552; Vol. 2 Treas. Dec., No. 21584; 96 Fed. Rep., 552.)

Costs in internal-revenue suits upon information from other than collector, etc.

SEC. 969. When a suit for the recovery of any penalty or forfeiture accruing under any law providing internal revenue is brought upon information received from any person other than a collector, deputy collector, or inspector of internal revenue, the United States shall not be subject to any costs of suit.

Similar provision in section 3214, p. 100.

Costs when several actions are brought which might be joined in one. (§§ 977, 980.)

Costs when paid by defendant.

SEC. 974. When judgment is rendered against the defendant in a prosecution for any fine or forfeiture incurred under a statute of the United States, he shall be subject to the payment of costs; and on every conviction for any other offense not capital, the court may in its discretion award that the defendant shall pay the costs of the prosecution.

The word defendant held to include a claimant in an action *in rem* for forfeiture. (*United States v. Seven Barrels Distilled Oil*, 8 Int. Rev. Rec., 162.)

Laws of the States, rules of decision.

SEC. 721. The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply.

The above provision is not applicable to proceedings in equity, or in admiralty, or to criminal offenses against the United States. (*Bucher v. Cheshire Railroad Company*, 125 U. S., 555.)

The courts of the United States are governed by the rules of the common law, because the common law is in force in the State or Territory where the cause of action arose or is to be enforced, and not because the common law has been adopted by the United States, or has under the laws of the United States any binding force, except as being the law of some State, Territory, or District. (*United States v. Garlinghouse et al.*, 11 Int. Rev. Rec., 11.)

Federal courts are bound to follow the decisions of the State courts construing their own constitution or statutes. (*Mooney v. Humphrey*, 28 Int. Rev. Rec., 343.)

How far decisions of highest courts of a State on State laws are binding on Supreme Court of United States. (*Burgess v. Seligman*, 107 U. S., 20.)

The limitation laws of the State in which the suit is brought do not furnish the rule for determining whether the action is brought in time. (*Arnson v. Murphy*, 109 U. S., 238.)

See section 858, p. 362, as to laws of the State being rules of decision as to competency of witnesses.

Practice conforms to forms and modes of proceeding in State courts.

SEC. 914. The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of court to the contrary notwithstanding.

Sage v. Tauszky (24 Int. Rev. Rec., 12).

In re Secretary of Treasury (45 Fed. Rep., 396).

United States v. Collins (18 Int. Rev. Rec., 69).

Nudd v. Burrows (91 U. S., 441).

Proceedings on execution governed by State laws.

SEC. 916. The party recovering a judgment in any common-law cause in any circuit or district court, shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the State in which such court is held, or by any such laws hereafter enacted, which may be adopted by general rules of such circuit or district court; and such courts may, from time to time, by general rules, adopt such State laws as may hereafter be in force in such State in relation to remedies upon judgments, as aforesaid, by execution or otherwise.

Collection of judgments for fines and penalties (§ 1041). (Case of Louis Teuscher, 23 Int. Rev. Rec., 202.) Poor convicts law (§ 1042).

State exemption laws govern. (Fink v. O'Neil, 106 U. S. (16 Otto), 272; 28 Int. Rev. Rec., 405.)

Judgment can not be opened at a term subsequent to that at which it was entered. (Bronson v. Schulten, 104 U. S. (14 Otto), 410; 28 Int. Rev. Rec., 231.)

If plaintiff and defendant agree, judgment may be set aside at a later subsequent term. (Seat, administrator, v. United States, 18 Ct. Clms., 468.)

Not lawful to employ any part of the United States Army as a *posse comitatus*. (Act June 18, 1878 (20 Stat., 152); 16 Op. Atty. Gen., 162.)

Redemption of lands sold under execution, local laws govern. (Brine v. Hartford Fire Insurance Company, 96 U. S., 627; 24 Int. Rev. Rec., 243.)

The United States circuit court, southern district of New York, made an order for the examination of Robert Boyd to discover whether he had property to satisfy judgment of the court. Boyd refused to testify, and was imprisoned for contempt of court. The Supreme Court was petitioned for a writ of *habeas corpus* and *certiorari*. The circuit court was sustained in proceedings in the matter in accordance with the laws of the State of New York, under section 916. (*Ex parte* Boyd, 28 Int. Rev. Rec., 232; 105 U. S., 647.)

Proceedings of marshal upon execution. (Sowles v. Witters, 46 Fed. Rep., 497.)

Executions in favor of United States to run in every State and Territory.

SEC. 986. All writs of execution upon judgments obtained for the use of the United States, in any court thereof, in one State, may run and be executed in any other State or in any Territory, but shall be issued from, and made returnable to, the court wherein the judgment was obtained.

Judgment records and liens of judgments.

AN ACT To regulate the liens of judgments and decrees of the courts of the United States.

SEC. 1, act of August 1, 1838 (25 Stat., 357) as amended by act of March 2, 1895 (28 Stat., 814). That judgments and decrees rendered in a circuit or district court of the United States within any State, shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such State: *Provided*, That whenever the laws of any State require a judgment or decree of a State court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such State shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State.

SEC. 2. That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and conven-

ient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

SEC. 3. That nothing herein shall be construed to require the docketing of a judgment or decree of the United States court, or the filing of a transcript thereof, in any State office within the same county or the same parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county, if the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish.

United States not required to file lien under State laws. (*United States v. Snyder et al.*, 39 Int. Rev. Rec., 189.)

Interest.

SEC. 963. Upon all bonds, on which suits are brought for the recovery of duties, interest shall be allowed, at the rate of six per centum a year, from the time when said bonds became due.

SEC. 966. Interest shall be allowed on all judgments in civil causes, recovered in a circuit or district court, and may be levied by the marshal under process of execution issued thereon, in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such State, and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such State.

An act of Congress giving interest on judgments does not include the Government unless expressly named or so intended by clear inference. (*First Comptroller's Opinion in Stephani's Case*, 26 Int. Rev. Rec., 313, and cases there cited; *United States ex rel. v. John Sherman*, Secretary of the Treasury, 98 U. S., 567; 25 Int. Rev. Rec., 198.)

Interest on taxes. (See under §§ 3185, p. 89, and 3214, p. 100.)

Interest on claims against United States. (See under § 3220, p. 103.)

Interest in suits against officers upon adjustment of accounts. (See § 3624, p. 380.)

Interest on judgments in Court of Claims. (See §§ 1090, 1091.)

Interest only from commencement of the suit when there has been unreasonable delay in prosecuting the claims (*Sanborn v. United States*, 135 U. S., 271; 36 Int. Rev. Rec., 142. *Wightman v. United States*, 23 Ct. Clms., 148.)

Writs of error and appeals to Supreme Court.

SEC. 699. A writ of error may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity hereinafter mentioned, without regard to the sum or value in dispute.

* * * * *

Second. Any final judgment of a circuit court, or of any district court acting as a circuit court, in any civil action brought by the United States for the enforcement of any revenue law thereof.

Third. Any final judgment of a circuit court, or of any district court acting as a circuit court, in any civil action against any officer of the revenue for any act done by him in the performance of his official duty, or for the recovery of any money exacted by or paid to him which shall have been paid into the Treasury.

* * * * *

Supreme Court has jurisdiction in an action to enforce a revenue law without regard to amount. (*Pettigrew v. United States*, 97 U. S., 385; 24 Int. Rev. Rec., 380.)

An act to provide for writs of error or appeals to the Supreme Court of the United States in all cases involving the question of the jurisdiction of the court below. (Act of February 25, 1889, (25 Stat., 693.)

Circuit courts of appeals.

AN ACT To establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes.

No appeal allowed from district to circuit courts—Appeals to Supreme Court.

SEC. 4. *Act March 3, 1891 (26 Stat., 827.)* That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, but all appeals by writ of error or otherwise, from said district courts shall only be subject to review in the Supreme Court of the United States or in the circuit court of appeals hereby established, as is hereinafter provided, and the review, by appeal, by writ of error, or otherwise, from the existing circuit courts shall be had only in the Supreme Court of the United States or in the circuit court of appeals hereby established according to the provisions of this act regulating the same.

SEC. 5. *Act of March 3, 1891 (26 Stat., 826.)* That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

From the final sentences and decrees in prize causes.

In cases of conviction of a capital or otherwise infamous crime.

In re Claassen (140 U. S., 200).

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. * * *

Section 6 provides that the judgment of the Circuit Courts of Appeals shall be final in all cases arising * * * "under the revenue laws" * * *, but the Circuit Court of Appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court. (*Railway Co. v. Pope*, 74 Fed. Rep., 1; *United States v. Union Pac. Ry. Co.*, 168 U. S., 505.)

Primary object of this act. (*American Construction Company v. Jacksonville Railway Company*, 148 U. S., 372.)

Amendments to the act establishing the circuit court of appeals, with annotation of decisions. (90 Fed. Rep., introduction.)

Act of February 18, 1895 (28 Stat., 666), to amend the act to establish circuit courts of appeals.

Act of February 9, 1893 (27 Stat., 434), establishing a court of appeals for the District of Columbia.

In none of the provisions of the act establishing the Circuit Courts of Appeals, defining the appellate jurisdiction, either of the Supreme Court or of the Circuit Courts of Appeals, is there any indication of an intention to confer upon the United States the right to take up a criminal case of any grade after judgment below in favor of the defendant. (*United States vs. Sanges*, 144 U. S., 323.)

SEC. 1008. No judgment, decree or order of a circuit or district court, in any civil action, at law or in equity, shall be reviewed in the Supreme Court, on writ of error or appeal, unless the writ of error is brought,

or the appeal is taken within two years after the entry of such judgment, decree or order:

Provided, That where a party entitled to prosecute a writ of error, or to take an appeal is an infant, insane person or imprisoned, such writ of error may be prosecuted, or such appeal may be taken, within two years after the judgment, decree, or order, exclusive of the term of such disability.

Appeals from Court of Claims to Supreme Court.

SEC. 708. All appeals from the Court of Claims shall be taken within ninety days after the judgment is rendered, and shall be allowed under such regulations as the Supreme Court may direct.

A judgment of the Court of Claims from which no appeal is taken is just as conclusive as a decision of the Supreme Court. (*United States v. O'Grady*, 22 Wall., 641.)

No bond required of United States, etc.

SEC. 1001. Whenever a writ of error, appeal or other process in law, admiralty, or equity, issues from or is brought up to the Supreme Court, or a circuit court, either by the United States or by direction of any Department of the Government, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit, or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction as aforesaid, shall be paid out of the contingent fund of the Department under whose directions the proceedings were instituted.

The United States, when a plaintiff in a civil action, is entitled to the writ of attachment, and is relieved by section 1001 from giving the usual undertaking in such cases. (*United States v. Ottman*, 23 Int. Rev. Rec., 294).

Certificate of probable cause.

SEC. 970. When, in any prosecution commenced on account of the seizure of any vessel, goods, wares, or merchandise, made by any collector or other officer, under any act of Congress authorizing such seizure, judgment is rendered for the claimant, but it appears to the court that there was reasonable cause of seizure, the court shall cause a proper certificate thereof to be entered, and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution: *Provided*, That the vessel, goods, wares, or merchandise be, after judgment, forthwith returned to such claimant or his agent.

The decision of the court below refusing certificate of probable cause not reviewable by circuit or Supreme Court. (*United States v. Abattoir Place*, 106 U. S., 160.)

See section 989, p. 371.

Statute of limitations.

SEC. 1044, *amended by act of April 13, 1876 (19 Stat., 32)*. No person shall be prosecuted, tried or punished for any offense, not capital, except as provided in section one thousand and forty-six, unless the indictment is found, or the information is instituted within *three* years next after such offense shall have been committed.

* * * * *

SEC. 1047. No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued: *Provided*, That the person of the offender, or the property liable for such penalty or forfeiture, shall, within the same period, be found within the United States; so that the proper process therefor may be instituted and served against such person or property.

An act to limit the time within which prosecutions may be instituted against persons charged with violating internal-revenue laws. Act of July 5, 1884 (23 Stat., 122).

That no person shall be prosecuted, tried or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, in all cases where the penalty prescribed may be imprisonment in the penitentiary, and within two years in all other cases:

Provided, That the time during which the person committing the offense is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings:

Provided further, That the provisions of this act shall not apply to offenses committed prior to its passage:

And provided further, That where a complaint shall be instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district:

And provided further, That this act shall not apply to offenses committed by officers of the United States.

Suits for taxes can be brought at any time. (See decisions quoted under § 3214, p. 100.)

Limitation of time within which suits must be brought against sureties on official bonds five years. (See act of August 8, 1888, p. 386.)

States can not pass statutes of limitation binding on the Federal Government. (*United States v. Thompson et al.*, 98 U. S., 486; 25 Int. Rev. Rec., 143.)

United States not bound by any statute of limitations unless Congress has clearly manifested its intention that they should be so bound. (*United States v. Nashville Railroad Company*, 118 U. S., 125; *United States v. Beebe*, 127 U. S., 354.)

When the United States voluntarily appear in a court of justice, they at the same time submit to the law and place themselves upon an equality with other litigants; but this does not apply to such defenses as laches and the statute of limitations. (*United States v. Ingate*, 1891, 48 Fed. Rep., 251.)

Execution not to issue against officers of revenue in cases of probable cause, etc.

SEC. 989. When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the

amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

Section 3220, page 103. Payment of judgments against collectors. (*United States v. Frerichs*, 124 U. S., 315; 34 Int. Rev. Rec., 39.)

Protection afforded to officers by certificate of probable cause. (*Averill v. Smith*, 17 Wall., 82; 17 Int. Rev. Rec., 171. *Stacy v. Emery*, 97 U. S., (7 Otto), 642; 24 Int. Rev. Rec., 378. *Dunnagan v. United States*, 17 Ct. Clms., 247; 28 Int. Rev. Rec., 144.)

The Government is not liable for the torts of its officers. (*Hart v. United States*, 95 U. S., 318; *Langford v. United States*, 101 U. S., 346; *United States v. Cummings et al.*, 35 Int. Rev. Rec., 142.)

The Government has never held itself liable to individuals for the malfeasance, laches, or unauthorized exercise of power by officers and agents. (*Gibbons v. United States*, 8 Wall., 274.)

Property taken under revenue laws irrepleviable.

SEC. 934. All property taken or detained by any officer or other person, under authority of any revenue law of the United States, shall be irrepleviable, and shall be deemed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof.

Brice et al. v. Elliott. (22 Int. Rev. Rec., 206.)

Conflict of State and United States officers. (14 Op. Atty. Gen., 370; 19 Int. Rev. Rec., 73.)

Goods in the hands of the United States held for taxes can not be attached by State officers. (*Harris v. Dennie*, 3 Pet., 292; *McCullough v. Large*, 30 Int. Rev. Rec., 166.)

Compromises of claims and of cases after judgment.

SEC. 3469. Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws.

Compromise of internal-revenue cases before judgment. (§ 3229, p. 111.)

Uncertainty whether the Government can obtain a verdict, proper ground for compromise. (16 Op. Atty. Gen., 259.)

Section 3469 does not extend to fines in criminal cases. (*United States v. George et al.*, 6 Blatch., 406; 12 Op. Atty. Gen., 543; 13 *ibid.*, 479.)

Compromise of solvent claims. (16 Op. Atty. Gen., 617; 25 Int. Rev. Rec., 29.)

Contra. (*MacVeagh*, 27 Int. Rev. Rec., 334.)

Government's claim to real property can not be compromised. (16 Op. Atty. Gen., 385.)

The Secretary of the Treasury has authority to remit or mitigate fines, penalties, or forfeitures and to remove disabilities before or after judgment or decree, and until the money is actually paid into the Treasury. (*United States v. Morris*, 10 Wheat., 246; §§ 5292, 5293, R. S.)

No power to compromise taxes. (*Dorsheimer v. United States*, 7 Wall., 166; 10 Int. Rev. Rec., 131.)

No authority to compromise cases under section 32, act of July 24, 1897. The Attorney-General may, however, compromise or settle such cases. (Vol. 1, Treas. Dec., (1899), No. 21270.)

The President's power under the Constitution to grant pardons (Art. II, § 2) includes the power of remitting fines, penalties, and forfeitures. (*Ex parte Garland*, 4 Wall., 333.)

Effect of pardon. (*Weimer v. Reynolds*, 24 Int. Rev. Rec., 372. *Knoté v. United States*, 95 U. S., 149; 24 Int. Rev. Rec., 4. *United States v. McKee*, 23 *ibid.*, 338.)

Pardon of officer bar to an action on official bond assigning same act as a breach. (*United States v. Cullerton*, 24 Int. Rev. Rec., 68.)

Pardon releases property seized for same offense. (*Osborn v. United States*, 91 U. S., (1 Otto), 474.)

Does not relieve from tax. (*United States v. Roelle et al.*, 24 Int. Rev. Rec., 332.)

A pardon is not complete until delivery. (*In re Moses De Puy*, 10 Int. Rev. Rec., 34.)

CHAPTER 2.

UNITED STATES ATTORNEYS—DUTIES AS TO PROSECUTIONS—COMPENSATION—ACCOUNTS—REPORTS—COMMISSIONERS—CLERKS OF COURTS—REPORTS OF, ETC.

Employment of attorneys or counsel.

SEC. 189. No head of a Department shall employ attorneys or counsel at the expense of the United States, but when in need of counsel or advice shall call upon the Department of Justice, the officers of which shall attend to the same.

Opinions of the Attorney-General, the effect of his advice. (5 Op. Atty. Gen., 97; 6 *ibid.*, 334; 7 *ibid.*, 699; 9 *ibid.*, 37.)

Questions of pure law actually arising in the administration of the Treasury Department, and requiring the personal consideration of the Secretary, may be referred to the Solicitor of the Treasury or to the Attorney-General. If referred to the latter, however, his answer should be regarded by the Department as law until withdrawn by him or overruled by the courts. (20 Op. Atty. Gen., 655.)

Attorney-General to provide counsel on investigation of claims.

SEC. 364. Whenever the head of a Department or Bureau gives the Attorney-General due notice that the interests of the United States require the service of counsel upon the examination of witnesses touching any claim, or upon the legal investigation of any claim, pending in such Department or Bureau, the Attorney-General shall provide for such service.

Compensation as attorney or counsel only allowed in certain cases.

SEC. 365. No compensation shall hereafter be allowed to any person besides the respective district attorneys and assistant district attorneys for services as an attorney or counselor to the United States, or to any branch or Department of the Government thereof, except in cases specially authorized by law, and then only on the certificate of the Attorney-General that such services were actually rendered, and that the same could not be performed by the Attorney-General, or Solicitor-General, or the officers of the Department of Justice, or by the district attorneys.

Duties of district attorneys to prosecute and to appear for collectors, etc.

SEC. 771. It shall be the duty of every district attorney to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned, and, unless otherwise instructed by the Secretary of the Treasury, to appear in behalf of the defendants in all suits or proceedings pending in his district against collectors, or other officers of the revenue, for any act done by them or for the recovery of

any money exacted by or paid to such officers, and by them paid into the Treasury.

"Infamous" crimes cannot be prosecuted by information. "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, etc. (Constitution, fifth amendment.)

Imprisonment at hard labor for a term of years is an infamous punishment. (Wilson *ex parte*, 114 U. S., 417; 31 Int. Rev. Rec., 224.)

A crime punishable by imprisonment in a State's prison or penitentiary with or without hard labor is an "infamous" crime. (Mackin *v.* United States, 117 U. S., 348.)

As to joining in one indictment two offenses subject to different punishments. (United States *v.* Gaston, 28 Fed. Rep., 849.) See section 1024, p. 561.

Duty of Government to defend its officers when sued for doing what the law requires. (9 Op. Atty. Gen., 52.)

The fact that a section is under the title "crimes" does not necessarily imply that for some purposes it is not a law relating to the revenue. (See §§ 5440, p. 389, and 5600 R. S.)

The act of March 3, 1887 (24 Stat., 505), providing for the bringing of suits against the Government in the United States district and circuit courts, makes it the duty of the district attorney to appear and defend the interests of the Government in such suits and within sixty days after the service of petition upon him to file a plea, answer, or demurrer on the part of the Government, and notice of any set-off or counter claim.

District attorneys to report to Commissioner of Internal Revenue.

SEC. 774. When any suit or proceeding arising under the internal-revenue laws, to which the United States are party, or any suit or proceeding against a collector or other officer of the internal revenue, wherein a district attorney appears, is commenced, the attorney for the district in which it is brought shall immediately report to the Commissioner of Internal Revenue the full particulars relating to the same; and he shall, immediately after the end of each term of the court in which such suit or proceeding is pending, forward to the said Commissioner a full and particular statement of its condition.

Duty of Commissioner to make regulations for observance of district attorneys and marshals. (§ 3215, p. 101.)

Duty of district attorneys as to prosecution and reports.

SEC. 838. It shall be the duty of every district attorney to whom any collector of customs, or of internal revenue, shall report, according to law, any case in which any fine, penalty, or forfeiture has been incurred in the district of such attorney for the violation of any law of the United States relating to the revenue, to cause the proper proceedings to be commenced and prosecuted without delay, for the fines, penalties, and forfeitures in such case provided, unless, upon inquiry and examination, he shall decide that such proceedings cannot probably be sustained, or that the ends of public justice do not require that such proceedings should be instituted; in which case he shall report the facts in customs cases to the Secretary of the Treasury, and in internal revenue cases to the Commissioner of Internal Revenue for their direction. And for the expenses incurred and services rendered in all such cases, the district attorney shall receive and be paid from the Treasury such sum as the Secretary of the Treasury shall deem just and reasonable, upon the certificate of the judge before whom such cases are tried or disposed of: *Provided*, That the annual compensation of such district

attorney shall not exceed the maximum amount prescribed by law, by reason of such allowance and payment.

That portion of this section referring to compensation of district attorneys is made inoperative by the act of May 28, 1896 (29 Stat., 178), except as to the southern district of New York or the District of Columbia.

Duty of collectors to report violations of law to district attorneys. (§ 3164, p. 74.)

Compensation of district attorneys.

SEC. 6. *Act of May 28, 1896 (20 Stat., 178), Legislative, executive, and judicial appropriation act.* That, on and after the first day of July, eighteen hundred and ninety-six, all fees and emoluments authorized by law to be paid to United States district attorneys and United States marshals shall be charged as heretofore, and shall be collected, as far as possible, and paid to the Clerk of the court having jurisdiction, and by him covered into the Treasury of the United States; and said officers shall be paid for their official services, which, in the case of district attorneys, shall include services in the circuit courts of appeals of their respective circuits wherever sitting, salaries and compensation hereinafter provided and not otherwise. * * *

SEC. 7. That the United States district attorney for each of the following judicial districts of the United States shall be paid, in lieu of the salaries, fees, per centums, and other compensations now allowed by law, an annual salary. * * *

The salaries of district attorneys and assistant district attorneys will be paid monthly by the Department of Justice, in accordance with section 16 of this act.

By the acts of June 27, 1898, and July 1, 1898, the right of Government officers to bring suits in the circuit and district courts for their fees or salaries was repealed, thus removing what had been found to be a serious difficulty in the workings of the act of March 3, 1887.

Warrants of arrest.

SEC. 19. *Act of May 28, 1896. (29 Stat., 184.)* * * * Warrants of arrest for violations of internal-revenue laws may be issued by United States commissioners upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector or deputy collector of internal revenue, or revenue agent or private citizen, but no such warrant of arrest shall be issued upon the sworn complaint of a private citizen unless first approved in writing by a United States district attorney. * * *

Under the act of May 28, 1896, which provides that no warrant of arrest for violations of the internal-revenue laws shall be issued upon the complaint of a private citizen "unless first approved in writing" by a district attorney, the issue of a warrant upon a complaint made by a field deputy marshal, which was approved by the district attorney by telephone, even though subsequently reduced to writing, is not authorized. (VI Comp. Dec., 113.)

Fees of U. S. marshals—illegal warrants. (IV Comp. Dec. 338, 449.)

* * * *Act of August 18, 1894, sundry civil appropriation act. (28 Stat., 416.)* And hereafter no part of any money appropriated to pay any fees to the United States commissioners, marshals, or clerks shall be used for any warrant issued or arrest made, or other fees in prosecutions under the internal revenue laws, unless said fees have been taxed against and collected from the defendant, or unless the prosecution has been commenced upon a sworn complaint setting forth the facts constituting the offense and alleging them to be within the personal knowledge of the affiant, or upon a sworn complaint by a United States district

attorney, collector, or deputy collector of internal revenue or revenue agent, setting forth the facts upon information and belief, and approved either before or after such arrest by a circuit or district judge or the attorney of the United States in the district where the offense is alleged to have been committed or the indictment is found:

Provided, That it shall be the duty of the marshal, his deputy, or other officer who may arrest a person charged with any crime or offense, to take the defendant before the nearest circuit court commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint; and upon the arrest of the accused, the return of the warrant, with a copy of the complaint attached, shall confer jurisdiction upon such officer as fully as if the complaint had originally been made before him, and no mileage shall be allowed any officer violating the provisions hereof.

Clerks of courts to report to Commissioner as to all moneys paid into court in internal-revenue cases, etc.

SEC. 797, *as amended by section 2, act of March 1, 1879 (20 Stat., 327)*. Every clerk of a circuit or district court shall, within thirty days after the adjournment of each term thereof, forward to the Solicitor of the Treasury a list of all judgments and decrees, to which the United States are parties, which have been entered in said court, respectively, during such term, showing the amount adjudged or decreed in each case, for or against the United States, and the term to which execution thereon will be returnable. *He shall also, at the close of each quarter or within ten days thereafter, report to the Commissioner of Internal Revenue all moneys paid into court on account of cases arising under the internal-revenue laws, as well as all moneys paid on suits on bonds of collectors of internal revenue. The report shall show the name and nature of each case, the date of payment into court, the amount paid on account of debt, tax, or penalty, and also the amount on account of costs. If such money, or any portion thereof, has been paid by the clerk to any internal-revenue officer or other person, the report shall show to whom each of such payments was made; and if to an internal-revenue officer, it shall be accompanied by the receipt of such officer.*

Section 5, act of February 22, 1875 (18 Stat., 334), provides that if any clerk of any district or circuit court of the United States shall willfully refuse or neglect to make any report or other document required by law to be by him made, or shall willfully refuse or neglect to forward any such report or document to the Department, officer, or person to whom by law the same should be forwarded, the clerk so offending shall be removed from office and shall not be eligible to any appointment as clerk or deputy clerk for the period of two years next after such removal.

Section 6 of the same act also provides additional punishment, by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, in the discretion of the court.

Clerk of court failing to deposit moneys, etc. (§ 5504, p. 384.)

Clerks of court to keep indices of judgment records. See act August 1, 1888, p. 367.

Clerks are instructed in all cases in the several courts arising under the internal-revenue laws of the United States, where moneys are recovered and paid in for the United States, to pay over such moneys to the collectors of internal revenue under the provisions of section 3216, Revised Statutes.

(Attorney-General's instructions to United States marshals, attorneys, etc., January 1, 1899, p. 133.)

CHAPTER 3.

DUTIES OF OFFICERS CHARGED WITH RECEIVING OR DISBURSING PUBLIC MONIES—PENALTIES FOR EMBEZZLEMENT AND FOR OFFICIAL MISCONDUCT—PROCEEDINGS AGAINST DELINQUENT OFFICERS—EVIDENCE—TRANSCRIPTS, ETC.

Moneys to be deposited without deduction.

SEC. 3617. The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in the next section, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post-Office Department.

The next section relates to the proceeds of sales of material.

Section 3619 provides that "Every officer or agent who neglects or refuses to comply with the provisions of section 3617 shall be subject to be removed from office, and to forfeit to the United States any share or part of the moneys withheld, to which he might otherwise be entitled."

(15 Op. Atty. Gen., 387. 24 Int. Rev. Rec., 130; 26 *id.*, 230.)

See section 3216, p. 101.

Proceeds of sales of property.

Extract from deficiency appropriation act of June 3, 1896 (29 Stat., 268). That from the proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, before being deposited into the Treasury, either as miscellaneous receipts on account of "proceeds of Government property" or to the credit of the appropriations to which such proceeds are by law authorized to be made, there may be paid the expenses of such sales, as approved by the accounting officers of the Treasury, so as to require only the net proceeds of such sales to be deposited into the Treasury, either as miscellaneous receipts or to the credit of such appropriations, as the case may be.

Form and regulations for rendering accounts for sales of old materials, etc. (Dept. Cir. No. 6, January 9, 1897.)

Duty of disbursing officers.

SEC. 3620, *as amended by the act of February 27, 1877 (19 Stat., 240).* It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law *and draw for the same only in favor of the persons to whom payment is made*; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors.

See section 5488, p. 382, providing penalty for unlawfully depositing.

Checks of disbursing officers. (15 Op. Atty. Gen., 288.)

Depositories to be designated by Secretary, section 3211, p. 99.

Regulation for the deposit of public moneys (Dept. Cir. No. 90, June 12, 1896).

Public moneys and official checks of United States disbursing officers. (Department Circular No. 125, August 14, 1897, amended by Dept. Cir. 58, April 17, 1899.)

Every person having moneys of the United States must pay to Treasurer, etc., and take receipt.

SEC. 3621, as amended by section 5, act May 28, 1896 (29 Stat., 140). Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer and Assistant Treasurer, or some public depository of the United States, without delay, and in all cases within thirty days of their receipt.

And the Treasurer, the Assistant Treasurer, or the public depository shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor.

The Secretary of the Treasury prescribed regulations as to "proper disposition of certificates of deposit." (Dept. Cir. No. 89, June 11, 1896.)

See section 5492, p. 382, providing penalty for failure to deposit as required.

Accounts to be rendered.

SEC. 3622, as amended by section 12, act of July 31, 1894 (28 Stat., 209). Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the Bureau to which they pertain, within ten days after the expiration of each successive month, and, after examination there, shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the non-receipt at the Treasury, or proper Bureau, of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. * * * Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of *Departments*, as the public interest may require.

SEC. 4, act of August 30, 1890 (26 Stat., 371), *sundry civil appropriation act*. That hereafter all disbursing officers of the United States shall render their accounts quarterly * * * but the Secretary of the Treasury may direct any or all such accounts to be rendered more frequently when in his judgment the public interest may require.

See section 5491, p. 382, providing penalty for failure to render accounts.

The provision giving the Secretary of the Treasury power in particular cases to extend the time prescribed for the rendition of accounts does not authorize him to institute a new system of rendering accounts; that is, to permit disbursing officers to render their accounts bimonthly, quarterly, or at longer intervals instead of monthly, as now required. (16 Op. Atty. Gen., 222.)

Rendition of accounts. (19 Op. Atty. Gen., 557; 36 Int. Rev. Rec., 173.)

The Dockery commission was organized by the act of March 3, 1893.

The "Dockery bill" was included in the legislative, executive and judicial appropriation bill for the fiscal year 1895. (Act of July 31, 1894 (28 Stat., 162).)

It abolished the office of Commissioner of Customs, Second Comptroller, and other offices, and modified the method of settlement of accounts.

The act of July 31, 1894, went into effect October 1, 1894, and provided that hereafter the First Comptroller shall be known as the Comptroller of the Treas-

ury. The Comptroller is not charged with the duty of revising accounts except upon appeal from the settlements made by the Auditors, an appeal to be taken within one year by either the claimant, the head of the Department interested, or by the Comptroller himself. Upon the request of a disbursing officer or the head of a Department, the Comptroller is required to give his decision upon the validity of a payment to be made, which decision, when rendered, shall govern the Auditors and the Comptroller in the settlement of the account involving the payment. He is required to approve, disapprove, or modify all decisions of the Auditors making an original construction or modifying an existing construction of statutes, and to certify his action to the Auditor. He transmits all decisions made by him forthwith to the Auditor or Auditors whose duties are affected thereby. The forms of keeping and rendering all public accounts (except those relating to the postal service), the recovery of debts certified by the Auditors to be due to the United States, and the preservation, with their vouchers and certificates, of accounts finally adjusted, are under the direction of the Comptroller.

Section 22 contains the following paragraph:

"It shall also be the duty of the heads of the several Executive Departments and of the proper officers of other Government establishments, not within the jurisdiction of any Executive Department, to make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them, as required by section 12 of this act, before their transmission to the Auditors, and for the execution of other requirements of this act in so far as the same relate to the several departments or establishments."

Regulations governing the revision, by the comptroller of the Treasury, of accounts settled by the Auditors. (Dept. Cir. No. 87, April 25, 1895.)

Transmittal of accounts.

SEC. 12. *Act of July 31, 1894 (28 Stat., 162), as amended by section 4, act of May 28, 1896 (29 Stat., 140).* All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the Auditors within twenty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the Auditor of a requisition for an advance of money, he shall disapprove the requisition, which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the Auditor's decision as to the sufficiency of these latter reasons: *Provided*, That the Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirements of mailing or otherwise sending accounts, as aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them: *Provided further*, That should there be a delay by the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President, or in the event of the absence from the seat of Government, or sickness of the President, an order of the Secretary of the Treasury, in the particular case shall be necessary to authorize the advance of money requested: *And provided further*, That this section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as now required by law.

The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers and administra-

tive departments and offices of the Government as were, respectively, at any time during the last preceding fiscal year delinquent in rendering or transmitting accounts to the proper offices in Washington and the cause therefor, and in each case indicating whether the delinquency was waived, together with such officers, including postmasters and officers of the Post-Office Department, as were found upon final settlement of their accounts to have been indebted to the Government, with the amount of such indebtedness in each case, and who, at the date of making report, had failed to pay the same into the Treasury of the United States. * * *

• Circular relative to transmittal of accounts, Department No. 114, dated August 16, 1894.

Circular relative to delinquency in rendering accounts, Circular No. 10, January 21, 1895.

Transmittal of accounts and advances of funds. (Dept. Circular No. 25, vol. 1, Treas. Dec. (1898), No. 18925.)

Distinct accounts required according to appropriation.

SEC. 3623. All officers, agents, or other persons, receiving public moneys, shall render distinct accounts of the application thereof, according to the appropriation under which the same may have been advanced to them.

Suits to recover money from officers regulated.

SEC. 3624. Whenever any person accountable for public money, neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account, the (First) Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account, the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six per centum per annum, from the time of receiving the money until it shall be repaid into the Treasury.

Duties of First Comptroller conferred on Comptroller of Treasury (Dookery bill), act of July 31, 1894 (28 Stat., 162).

Distress warrant.

SEC. 3625, *as amended by section 4, act July 31, 1894. (28 Stat., 162.)* Whenever any collector of the revenue, receiver of public money, or other officer who has received the public money before it is paid into the Treasury of the United States, fails to render his account, or pay over the same in the manner or within the time required by law, it shall be the duty of the *proper Auditor* to cause to be stated the account of such officer, exhibiting truly the amount due to the United States, and to certify the same to the Solicitor of the Treasury, who shall issue a warrant of distress against the delinquent officer and his sureties, directed to the marshal of the district in which such officer and his sureties reside. Where the officer and his sureties reside in different districts, or where they, or either of them, reside in a district other than that in which the estate of either may be, which it is intended to take and sell, then such warrant shall be directed to the marshals of such districts, respectively.

Section 3217, p. 102.

Proceedings by distress warrant have not been resorted to for many years. The remedy by suit on bond is deemed preferable.

Failure of disbursing officer to account—Duty thereupon of Auditor and Solicitor of Treasury.

SEC. 3633, *as amended by section 4, act of July 31, 1894 (28 Stat., 162).* Whenever any officer employed in the civil, military, or naval service of the Government, to disburse the public money appropriated for those branches of the public service, respectively, fails to render his accounts, or to pay over, in the manner and in the times required by law, or by the regulations of the Department to which he is accountable, any sum of money remaining in his hands, it shall be the duty of the *proper Auditor*, as the case may be, who shall be charged with the revision of the accounts of such officer, to cause to be stated and certified the account of such delinquent officer to the Solicitor of the Treasury, who is hereby authorized and required immediately to proceed against such delinquent officer, in the manner directed in the six preceding sections.

The six preceding sections referred to, viz, sections 3627, 3628, 3629, 3630, 3631, 3632, relate to proceedings by warrant of distress, not usually resorted to.

Rights of United States reserved.

SEC. 3638. Nothing contained in the provisions of this Title relating to distress-warrants shall be construed to take away or impair any right or remedy which the United States might have, by law, for the recovery of taxes, debts, or demands.

Duties of officers as custodians of public moneys to safely keep, etc.

SEC. 3639. The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land-offices, all postmasters, and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law.

The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sum for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, commissary-general, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments.

See section 5497, p. 383.

Entry to be kept of sums received and of transfer and payment.

SEC. 3643. All persons charged by law with the safe-keeping, transfer, and disbursement of the public moneys, other than those connected with the Post-Office Department, are required to keep an accurate entry of each sum received and of each payment or transfer.

Embezzlement: Penalty for requiring receipt for larger sum than that actually paid.

SEC. 5483. Every officer charged with the payment of any of the appropriations made by any act of Congress, who pays to any clerk, or other employé of the United States, a sum less than that provided by law, and requires such employé to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employé of the Government, and shall be imprisoned at hard labor for the term of two years.

Embezzlement: Penalty for disbursing officer unlawfully depositing, converting, loaning, or transferring public money.

SEC. 5488. Every disbursing officer of the United States who deposits any public money intrusted to him in any place or in any manner, except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, or for any purpose not prescribed by law withdraws from the Treasurer or any assistant treasurer, or any authorized depository, or for any purpose not prescribed by law transfers or applies any portion of the public money intrusted to him, is, in every such act, deemed guilty of an embezzlement of the money so deposited, converted, loaned, withdrawn, transferred, or applied; and shall be punished by imprisonment with hard labor for a term not less than one year nor more than ten years, or by a fine of not more than the amount embezzled or less than one thousand dollars, or by both such fine and imprisonment.

See sections 3620, p. 377, and 5497, p. 383.

Section 5489, p. 382, provides penalty for failure of Treasurer of United States, assistant treasurer, or any public depository to safely keep moneys deposited.

Embezzlement: Penalty for custodians of public money failing to safely keep, etc.

SEC. 5490. Every officer or other person charged by any act of Congress with the safe-keeping of the public moneys, who fails to safely keep the same, without loaning, using, converting to his own use, depositing in banks, or exchanging for other funds than as specially allowed by law, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged; and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money so embezzled.

Collector or receiver of public money excused from paying if prevented by act of God or the public enemy. (*United States v. Thomas*, 15 Wall., 337.)

Felonious taking or carrying away of public moneys in the custody of a receiver without fault or negligence on his part, not any defense on the bond. (*United States v. Prescott*, 3 How., 578; also *United States v. Dashiell*, 4 Wall., 182; *Boyden v. United States*, 13 Wall., 17.)

Embezzlement: Penalty for failure of officer or agent to render accounts, etc.

SEC. 5491. Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law, shall be deemed guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled, and shall be imprisoned not less than six months nor more than ten years.

Failure to make reports. See section 1780, p. 384.

Embezzlement: Penalty for failure to deposit as required.

SEC. 5492. Every person who, having moneys of the United States in his hands or possession, fails to make deposit of the same with the

Treasurer, or some assistant treasurer, or some public depository of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper Department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money embezzled.

Record evidence of embezzlement.

SEC. 5494. Upon the trial of any indictment against any person for embezzling public money under the provisions of the six preceding sections, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money.

Refusal to pay any draft, etc., prima facie evidence of embezzlement.

SEC. 5495. The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money, to pay any draft, order, or warrant, drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, as prima-facie evidence of such embezzlement.

Evidence of conversion.

SEC. 5496. If any officer charged with the disbursement of the public moneys, accepts, receives, or transmits to the Treasury Department to be allowed in his favor, any receipt or voucher from a creditor of the United States, without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion, by such officer, to his own use, of the amount specified in such receipt or voucher.

Unlawfully receiving, etc., to be embezzlement—Embezzlement by internal-revenue officer or employé and others.

SEC. 5497, *as amended by act of February 3, 1879 (20 Stat., 280)*. Every banker, broker, or other person not an authorized depository of public moneys, who knowingly receives from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or who uses, transfers, converts, appropriates, or applies any portion of the public money for any purpose not prescribed by law, and every president, cashier, teller, director, or other officer of any bank or banking association, who violates any of the provisions of this section, is guilty of an act of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be punished as prescribed in section fifty-four hundred and eighty-eight. *And any officer connected with, or employed in, the internal-revenue service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such*

officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be punished by a fine equal to the value of the money and property thus embezzled or converted, or by imprisonment not less than three months nor more than ten years, or by both such fine and imprisonment.

See section 3639, p. 381.

Application of laws imposing punishment on internal-revenue officers to certain other classes of persons. (§ 3169a, p. 77.)

Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted, or into whose hands it has lawfully come; and it differs from larceny in the fact that the original taking of the property was lawful, or with the consent of the owner, while in larceny the felonious intent must have existed at the time of the taking. (*Moore v. United States*, 160 U. S., 268.)

Penalty for clerks and other officers of United States courts failing to deposit moneys.

SEC. 5504. Every clerk or other officer of a court of the United States, who fails forthwith to deposit any money belonging in the registry of the court, or hereafter paid into court or received by the officers thereof, with the Treasurer, assistant Treasurer, or a designated depository of the United States, in the name and to the credit of such court, or who retains or converts to his own use or to the use of another any such money, is guilty of embezzlement, and shall be punished by fine not less than five hundred dollars, and not more than the amount embezzled, or by imprisonment not less than one year nor more than ten years, or by both such fine and imprisonment; but nothing herein shall be held to prevent the delivery of any such money upon security, according to agreement, of parties under the direction of the court.

Sections 3616, 3617, p. 377.

Penalty for receiving money belonging in the registry of the court.

SEC. 5505. Every person who knowingly receives, from a clerk or other officer of a court of the United States, any money belonging in the registry of such court as a deposit, loan, or otherwise, is guilty of embezzlement, and shall be punished as prescribed in the preceding section.

Penalty for failure to make reports.

SEC. 1780. Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such act or regulation, shall be fined not more than one thousand dollars and not less than one hundred.

Disbursing officers forbidden to trade in public funds or property.

SEC. 1788. Every officer of the United States concerned in the disbursement of the revenues thereof who carries on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be deemed guilty of a misdemeanor, and punished by a fine of three thousand dollars, and shall, upon conviction, be removed from office, and forever thereafter be incapable of holding any office under the United States.

Collecting officers forbidden to trade in public property.

SEC. 1789. Every officer concerned in the collection of the revenues of the United States who carries on any trade or business in any public property of the United States, or of any State, shall be deemed guilty of a misdemeanor, and punished by a fine of three thousand dollars, and shall, upon conviction, be removed from office, and forever thereafter be incapable of holding any office under the United States.

Certain business forbidden to clerks in Treasury Department. (§ 244, p. 405.)

Transcripts from books, etc., of the Treasury, to be evidence in suits against delinquents.

SEC. 886. When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the Register and authenticated under the seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by the Register, or by such Auditor, as the case may be, to be true copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided*, That where suit is brought upon a bond or other sealed instrument, and the defendant pleads "non est factum," or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit.

Soule v. United States (100 U. S. (10 Otto), 8; 26 Int. Rev. Rec., 4); *United States v. Hunt* (105 U. S. (15 Otto), 183; 28 Int. Rev. Rec., 134)

The form of certificate proper to be used under section 886 is discussed by Mr. Justice Harlan in *United States v. Pinson* (102 U. S., 548; 27 Int. Rev. Rec., 62).

The transcripts from the books and proceedings of the Department of the Treasury and the copies of bonds, contracts, and other papers provided for in section eight hundred and eighty-six of the Revised Statutes shall hereafter be certified by the Secretary or an Assistant Secretary of the Treasury under the seal of the Department [§ 10, act of March 2, 1895, (28 Stat., 809.)]

Section 886 applies *only* to certifying transcripts from the books and proceedings of the Treasury Department and copies of bonds, contracts, or other papers relating to or connected with the settlement of an account *when suit is brought* in any case of delinquency of a revenue officer or other person accountable for public money.

All other copies of books, records, papers, or documents should be certified under section 882, R. S., p. 364. (Department Circular No. 100, issued July 21, 1897.)

Transcripts from books, etc., of the Treasury in indictments for embezzlement of public moneys.

SEC. 887. Upon the trial of any indictment against any person for embezzling public moneys, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript

from the books and proceedings of the Treasury Department, as provided by the preceding section.

Extracts may be given in evidence. (*United States v. Gaussen*, 19 Wall., 198.)

It is the seal which authenticates the transcript, and not the signature of the Secretary. (*Smith v. United States*, 5 Pet., 292.)

Delinquents for public money; judgment at return term unless, etc.; credits.

SEC. 957. When suit is brought by the United States against any revenue officer or other person accountable for public money, who neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant, in open court, (the United States attorney being present,) makes and subscribes an oath that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the accounting officers of the Treasury, and rejected; specifying in the affidavit each particular claim so rejected, and that he cannot then safely come to trial. If the court, when such oath is made, subscribed, and filed, is thereupon satisfied, a continuance until the next succeeding term may be granted. Such continuance may also be granted when the suit is brought upon a bond or other sealed instrument, and the defendant pleads non est factum, or makes a motion to the court, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper certified in the affidavit. And no continuance shall be granted except as herein provided.

As to credits, see *United States v. Flanders* (112 U. S., 88; 30 Int. Rev. Rec., 397).

Judgment against a defaulting collector. (*United States v. Ingate* (1891), 48 Fed. Rep., 251).

See section 951, p. 391, as to claims for credit in suits of United States against individuals.

Notice of deficiency in accounts of principals to be given to sureties upon bonds of United States officials, and fixing a limitation of time within which suits shall be brought against said sureties upon said bonds.

SEC. 1. *Act of August 8, 1888 (25 Stat., 387)*. That hereafter, whenever any deficiency shall be discovered in the accounts of any official of the United States, or of any officer disbursing or chargeable with public money, it shall be the duty of the accounting officers making such discovery to at once notify the head of the Department having control over the affairs of said officer of the nature and amount of said deficiency, and it shall be the immediate duty of said head of Department to at once notify all obligors upon the bond or bonds of such official of the nature of such deficiency and the amount thereof. Said notification shall be deemed sufficient if mailed at the post-office in the city of Washington, District of Columbia, addressed to said sureties respectively, and directed to the respective post-offices where said obligors may reside, if known; but a failure to give or mail such notice shall not discharge the surety or sureties upon such bond.

SEC. 2. That if, upon the statement of the account of any official of the United States, or of any officer disbursing or chargeable with public money, by the accounting officers of the Treasury, it shall thereby appear that he is indebted to the United States; and suit therefor shall not be instituted within five years after such statement of said account, the sureties on his bond shall not be liable for such indebtedness.

Department Circular No. 197, December 1, 1898. (Vol. 2, Treas. Dec., No. 20381.)

CHAPTER 4.

PENALTIES FOR PERJURY—OBSTRUCTING PROCESS—RESISTING OFFICERS—RESCUING PRISONERS OR PROPERTY—FALSELY ASSUMING TO BE AN OFFICER—BRIBERY—CONSPIRACY—DESTROYING PUBLIC RECORDS—STEALING PUBLIC PROPERTY—RECEIVING STOLEN GOVERNMENT PROPERTY—COUNTERFEITING PUBLIC RECORDS, SECURITIES, AND STAMPS—MAKING FALSE CLAIMS, ETC.

Perjury; penalty for.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.

Indictment for perjury. (*United States v. William K. Smith*, 12 Int. Rev. Rec., 135; *United States v. McConaughy*, 34 Int. Rev. Rec., 80; *United States v. Edwards*, 43 Fed. Rep., 67.)

Powers of notaries public to administer oaths. (*United States v. Hall*, 131 U. S., 50.) See section 1778.

The oath must be administered in a proceeding that is valid and regular. It must be authorized by law. The false testimony must be material, and the oath must be administered by one having legal authority to administer it. (See cases cited in *United States v. Bedgood*, 49 Fed. Rep., 54.)

Section 5392 is identical with section 42 of the internal-revenue act of June 30, 1864. It is under title "Crimes" in the Revised Statutes.

Obstructing or resisting officer in serving writ; penalty.

SEC. 5398. Every person who knowingly and willfully obstructs, resists, or opposes any officer of the United States in serving, or attempting to serve or execute, any mesne process or warrant, or any rule or order of any court of the United States, or any other legal or judicial writ or process, or assaults, beats, or wounds any officer or other person duly authorized in serving or executing any writ, rule, order, process, or warrant, shall be imprisoned not more than twelve months, and fined not more than three hundred dollars.

United States v. Terry, 41 Fed. Rep., 771.

Obstructing internal-revenue officer. (3177, p. 84.)

Distiller obstructing officer. (§ 3276, p. 165.)

Deputy marshal an officer under this section. (17 Fed. Rep., 150.)

Rescue of prisoners; penalty.

SEC. 5401. Every person who, by force, sets at liberty or rescues any person who, before conviction, stands committed, for any capital crime against the United States, or who by force sets at liberty or rescues any person committed for or convicted of any offense other than capital, shall be fined not more than five hundred dollars, and imprisoned not more than one year.

Taking seized property from custody of revenue officer, etc.; penalty.

SEC. 5446. Every person who dispossesses or rescues, or attempts to dispossess or rescue, any property taken or detained, by any officer or

other person under the authority of any revenue law of the United States, or aids or assists therein, shall be imprisoned not more than twelve months, and fined not more than three hundred dollars.

Rescuing property seized by collector. (§ 3177, p. 84.)

Seized property irrepleviable. (§ 934, p. 372.)

Destroying property to prevent its seizure or destroying seized property.

Discharging deadly weapon at person authorized to make searches or seizures. (§ 5447.)

Falsely assuming to be a Government officer; penalty.

SEC. 5448. Every person who falsely represents himself to be a revenue officer, and, in such assumed character, demands or receives any money or other article of value from any person for any duty or tax due to the United States, or for any violation or pretended violation of any revenue law of the United States, shall be deemed guilty of a felony, and shall be fined five hundred dollars, and imprisoned not less than six months and not more than two years.

[SEC. 5448a.] *Act of April 18, 1884 (23 Stat., 11).* That every person who, with intent to defraud either the United States or any person, falsely assumes or pretends to be an officer or employé acting under the authority of the United States, or any Department, or any officer of the Government thereof, and who shall take upon himself to act as such, or who shall in such pretended character demand or obtain from any person or from the United States, or any Department, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by a fine of not more than one thousand dollars, or imprisonment not longer than three years, or both said punishments, in the discretion of the court.

Bribery; penalty.

SEC. 5451. Every person who promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section.

The punishment prescribed in the preceding section (5450) is a fine of not more than three times the amount of money or value of the thing offered and imprisonment not more than three years.

An indictment for offering an internal-revenue officer a bribe to set fire to a distillery situated within the limits of a State is not cognizable by the Federal courts, since there are no common-law offenses against the United States, and section 5451, which makes it a crime to offer to bribe an officer of the United States with intent to influence him to do or omit to do any act in violation of his lawful duty, applies only to acts within the official functions of the officer. (*United States v. Gibson* (1891), 47 Fed. Rep., 833.)

United States officers accepting bribes; penalty.

SEC. 5501. Every officer of the United States, and every person acting for or on behalf of the United States, in any official capacity under or by virtue of the authority of any department or office of the Government thereof; and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may, at any time, be pending, or which may be by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as prescribed in the preceding section.

Section 5500 relates to members of Congress receiving bribes, etc., and the penalty is a fine of not more than three times the amount received and imprisonment not more than three years.

SEC. 5502. Every member, officer, or person, convicted under the provisions of the two preceding sections [5500 and 5501], who holds any place of profit or trust, shall forfeit his office or place; and shall thereafter be forever disqualified from holding any office of honor, trust, or profit under the United States.

Internal-revenue officer accepting bribes. (§ 3169, p. 76.)

District attorney or marshal accepting bribes. (§ 3170, p. 78.)

Extortion by internal-revenue informers; penalty.

SEC. 5484. Every person who shall receive any money or other valuable thing under a threat of informing, or as a consideration for not informing against any violation of any internal-revenue law, shall, on conviction thereof, be punished by a fine not exceeding two thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

Extortion by officer of the United States. (See § 5481, R. S.)

Extortion by internal-revenue officer or agent. (§ 3169, p. 76.)

Conspiracy to prevent persons from accepting or holding office under United States or to injure an officer in his person or property; penalty.

SEC. 5518. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of the lawful discharge of the duties of his office, or while engaged in his lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder or impede him in the discharge of his official duties; each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment.

Conspiracy to defraud; penalty.

SEC. 5440, as amended by act of May 17, 1879 (21 Stat., 4). If two or more persons conspire either to commit any offense against the United States or

to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years or to both fine and imprisonment in the discretion of the court.

This section was originally enacted as part of the internal-revenue act of June 30, 1864 (13 Stat., 239), and so remained until the revision; now it is under the title "Crimes." (See §5600.)

A conspiracy to defraud the Government, though it may be directed to the revenue as its object, is punishable by the general law against all conspiracies, and can hardly be said, in any just sense, to arise under the revenue laws. *United States v. Hirsch* (100 U. S. (10 Otto), 33; 25 Int. Rev. Rec., 375).

What is conspiracy? (*United States v. Rindskopf et al.*, 21 Int. Rev. Rec., 326.)

Declaration of co-conspirators. (*United States v. Wm. McKee*, 22 Int. Rev. Rec., 57.)

Limitation on prosecution under this section. (*United States v. Owen et al.*, 34 Int. Rev. Rec., 3.)

History of the conspiracy to defraud the revenue of the tax on spirits in St. Louis from 1871 to 1875. (*United States v. McKee*, 3 Dillon, 546; *United States v. Babcock*, 3 Dillon, 583; 22 Int. Rev. Rec., 86.)

Requisites of indictment for conspiracy to defraud. (*United States v. Ulrici*, 3 Dillon, 532.)

Officer can not be joined with private persons in an indictment for conspiracy. (*United States v. McDonald*, 3 Dillon, 543.)

Destroying, carrying away, etc., public records; penalty.

SEC. 5403. Every person who willfully destroys or attempts to destroy, or, with intent to steal or destroy, takes and carries away any record, paper, or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper, or document, or record filed or deposited in any public office, or with any judicial or public officer, shall, without reference to the value of the record, paper, document, or proceeding so taken, pay a fine of not more than two thousand dollars, or suffer imprisonment, at hard labor, not more than three years, or both.

Destroying records by officer in charge; penalty.

SEC. 5408. Every officer, having the custody of any record, document, paper, or proceeding specified in section fifty-four hundred and three, who fraudulently takes away, or withdraws, or destroys any such record, document, paper, or proceeding filed in his office or deposited with him or in his custody, shall pay a fine of not more than two thousand dollars, or suffer imprisonment at hard labor not more than three years, or both; and shall, moreover, forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States.

Carrying away without authority and unlawfully using papers relating to claims, etc.; penalty.

SEC. 5454. Every person who takes and carries away, without authority from the United States, from the place where it has been filed, lodged, or deposited, or where it may for the time being actually be kept by authority of the United States, any certificate, affidavit, deposition, written statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper, prepared, fitted, or intended to be used or presented in order to procure the payment of money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account,

or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof, has or has not already been allowed or paid, or who presents or uses or attempts to use any such document, record, file, or paper so taken and carried away in order to procure the payment of any money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, shall be imprisoned at hard labor not more than ten years, or fined not more than five thousand dollars.

Robbery or larceny of personal property of the United States; penalty.

SEC. 5456. Every person who robs another of any kind or description of personal property belonging to the United States, or feloniously takes and carries away the same, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not less than one nor more than ten years, or by both such fine and imprisonment.

Embezzling or stealing public property or receiving and retaining in possession property stolen; penalty.

SEC. 1, *act of March 3, 1875 (18, Stat., 479)*. That any person who shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be deemed guilty of felony, and on conviction thereof before the district or circuit court of the United States in the district wherein said offense may have been committed, or into which he shall carry or have in possession (of) said property so embezzled, stolen, or purloined, shall be punished therefor by imprisonment at hard labor in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or both, at the discretion of the court before which he shall be convicted.

SEC. 2. That if any person shall receive, conceal, or aid in concealing, or have, or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined from the United States by any other person, knowing the same to have been so embezzled, stolen, or purloined, such person shall, on conviction before the circuit or district court of the United States in the district wherein he may have such property, be punished by a fine not exceeding five thousand dollars, or imprisonment at hard labor in the penitentiary not exceeding five years, one or both, at the discretion of the court before which he shall be convicted; and such receiver may be tried either before or after the conviction of the principal felon, but if the party has been convicted, then the judgment against him shall be conclusive evidence in the prosecution against such receiver that the property of the United States therein described has been embezzled, stolen or purloined.

Forging, counterfeiting, etc., bid, bond, public record, etc.; penalty.

SEC. 5418. Every person who falsely makes, alters, forges, or counterfeits any bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, or utters or publishes as true any such false, forged, altered, or coun-

terfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for such purpose, knowing the same to be false, forged, altered, or counterfeited, or transmits to or presents at the office of any officer of the United States any such false, forged, altered or counterfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for such purpose, shall be imprisoned at hard labor for a period not more than ten years, or be fined not more than one thousand dollars, or be punished by both such fine and imprisonment.

Falsely making, forging, or counterfeiting public records, etc.; penalty.

SEC. 5479. If any person shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid, or assist in the false making, altering, forging, or counterfeiting, any bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, knowing the same to be false, forged, altered, or counterfeited; or shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, the office of any officer of the United States, any such false, forged, altered, or counterfeited bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such punishments.

Counterfeiting United States securities and stamps; penalty.

SEC. 5414. Every person who, with intent to defraud, falsely makes, forges, counterfeits, or alters any obligation or security of the United States shall be punished by a fine of not more than five thousand dollars and by imprisonment at hard labor not more than fifteen years.

SEC. 5413. The words "obligation or other security of the United States" shall be held to mean all * * * stamps and other representatives, of value, of whatever denomination, which have been or may be issued under any act of Congress.

See also sections 5430, 5431, 5432, 5433, 5434.

Counterfeit money, act of February 10, 1891. (*United States v. Kuhl* (1898), 85 Fed. Rep., 624.)

Making or presenting false, fictitious, or fraudulent claims; penalty.

SEC. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any

fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

CHAPTER 5.

CLAIMS—PAYMENT TO PERSON IN ARREARS—SET-OFFS—CREDITS—PRIORITY OF GOVERNMENT—APPROPRIATIONS—ATTORNEYS BEFORE DEPARTMENTS—DUPLICATE CHECKS—PENALTY ENVELOPES—TELEGRAMS—DISPOSITION OF USELESS PAPER, ETC.

Claims to be adjusted in the Treasury Department.

SEC. 236. All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury.

The doctrine that the United States can not be sued without its consent examined and reaffirmed. (*United States v. Lee*, 106 U. S., 196; 29 Int. Rev. Rec., 1.)

A court of claims was created by the act of February 24, 1855 (§ 1049). Cases arising under the revenue laws not within the jurisdiction of the Court of Claims. (*Nichols v. United States*, 7 Wall., 129.)

The act of March 3, 1887 (24 Stat., 505), provides for bringing suits against the Government, giving district and circuit courts concurrent jurisdiction with Court of Claims. (*United States v. Jones*, 131 U. S., 1.)

The act of March 3, 1883 (22 Stat., 485), "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," called the "Bowman Act," provides that claims involving controverted questions of fact or law pending in any of the Executive Departments may be transmitted to the Court of Claims. (*McClure v. United States*, 19 Ct. Clms., 18; *Smith v. United States*, 19 *ibid.*, 691.)

Section 1063, as to head of Department transmitting claims to the Court of Claims. (*Hart v. United States*, 15 Ct. Clms., 414.)

Secretary can not legally by departmental order change a practice or course of office prescribed by statute for settlement of accounts. (19 Op. Atty. Gen., 177.)

Power of Auditor and Comptroller stated. (*Waters v. United States*, 21 Ct. Clms., 37, 38.)

Any claim made against an Executive Department "involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases, or furnish a precedent for the future action of any Executive Department in the adjustment of a class of cases, without regard to the amount involved in the particular case, or where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States," may be transmitted to the Court of Claims by the head of such Department under Revised Statutes, section 1063, for final adjudication, provided such claim be not barred by limitation and be one of *which*, by reason of its subject-matter and character, that court could take judicial cognizance at the voluntary suit of the claimant.

Any claim embraced by section 1063, without regard to its amount, and whether the claimant consents or not, may be transmitted under the act of March 3, 1883, to the Court of Claims by the head of the Executive Department in which it is pending for a report to such Department of facts and conclusions of law for "its guidance and action."

Any claim embraced by that section may, in the discretion of the Executive Department in which it is pending and with the expressed consent of the plaintiff, be transmitted to the Court of Claims, under the act of March 3, 1887, without regard to the amount involved, for a report, merely advisory in its character, of facts or constructions of law. (*United States v. New York* (1896), 160 U. S., 598.)

The rule that a final decision upon a knowledge of all the facts made by an officer authorized to decide on claims against the Government is not liable to be reopened and reviewed by his successor in office unless the decision is founded on mistakes in matters of fact arising from errors in calculation, or the absence of material testimony afterwards discovered and produced, is well established.

Attorney-General Taney said: "For if a final decision, upon a knowledge of all the facts, made by an officer authorized to decide on claims against the Government, is liable to be opened and reviewed by his successor in office, every change in the officer will produce a new hearing of the claim, and the accounts of the Government will always remain open and unsettled." (2 Op. Atty. Gen., 464; see also 14 Op. Atty. Gen., 275; 18 Int. Rev. Rec., 28, and cases there cited; also 13 Op. Atty. Gen., 388, 457.)

No subsequent decision upon a doubtful or controverted question of law, essentially modifying a prevailing rule which was applied to the settlement of an account, would authorize the reopening of it, with a view to a readjustment of it in accordance with such decision. (12 Op. Atty. Gen., 388.)

A decision in the Court of Claims, while it is not binding, is authority for the head of a Department to reopen a case. (9 Op. Atty. Gen. (Black), 422.)

The accounting officers of the Treasury are not authorized to reopen accounts for the purpose of correcting decisions upon questions of law subsequently held to be erroneous. (VI Comp. Dec., 91.)

Not the duty of a head of Department to make estimates for appropriations to pay claims which the law does not provide for. (*Pitman et al. v. United States*, 20 Ct. Clms., 253.)

Accounting officers can not revise judgments of court. (*O'Grady v. United States*, 22 Wall., 641.)

Subpœnas to witnesses in matters relating to claims.

SEC. 184. Any head of a Department or Bureau in which a claim against the United States is properly pending may apply to any judge or clerk of any court of the United States, in any State, District, or Territory, to issue a subpoena for a witness being within the jurisdiction of such court, to appear at a time and place in the subpoena stated, before any officer authorized to take depositions to be used in the courts of the United States, there to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined upon the subject of such claim.

No payment to person in arrears to the United States.

SEC. 1766. No money shall be paid to any person for his compensation who is in arrears to the United States, until he has accounted for and paid into the Treasury all sums for which he may be liable. In all cases where the pay or salary of any person is withheld in pursuance of this section, the accounting officers of the Treasury, if required to do so by the party, his agent or attorney, shall report forthwith to the Solicitor of the Treasury the balance due; and the Solicitor shall, within sixty days thereafter, order suit to be commenced against such delinquent and his sureties.

Set-offs. (Bonnafon's case, 14 Ct. Clms., 484; Taggart's case, 17 Ct. Clms., 322; 28 Int. Rev. Rec., 162; 17 Op. Atty. Gen., 677.)

Money offered in compromise can not be set off against taxes assessed. (Boughton v. United States, 13 Ct. Clms., 284.)

Money due to an employee of the Government, and in the hands of a disbursing officer, can not be attached by a process issued from a State court. (10 Op. Atty. Gen., 120.)

Deduction of debt due the United States from any judgment recovered or claim allowed.

Act of March 3, 1875 (18 Stat., 481).

That when any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set-off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States.

But if such plaintiff, or claimant, denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment.

And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch.

And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary with six per cent interest thereon for the time it has been withheld from the plaintiff.

As to interest, see Stephani's case (26 Int. Rev. Rec., 314), and section 966, p. 368.

Sanborn's case, decision of First Comptroller. (28 Int. Rev. Rec., 265.)

Suits of United States against individuals; what credits allowed.

SEC. 951. In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not

before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States or by some unavoidable accident.

Section 957, p. 368.
United States v. Kimball (101 U. S. (11 Otto), 725); *Western Union Railroad Company v. United States* (101 U. S., 543; 26 Int. Rev. Rec., 165).

Priority of United States in insolvent estates.

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Lewis, trustee, v. United States. (92 U. S., 618; 22 Int. Rev. Rec., 186.)
 Decision under the repealed bankrupt act. (*United States v. Herron*, 20 Wall., 251; 19 Int. Rev. Rec., 137.)
 Act of July 1, 1898 (30 Stat., 544-566), to establish a uniform system of bankruptcy throughout the United States.

The right of the United States to priority of payment does not extinguish or supersede a specific lien. (*United States v. Duncan, 4 McLean*, 607.)

The right to priority is not a lien upon the debtor's property, but a right to receive payment out of the general estate or funds of the debtor before other claims are satisfied. (*United States v. Eggleston*, 23 Int. Rev. Rec., 113.)

Liability of executors, etc., to United States.

SEC. 3467. Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

See Legacies and distributive shares, section 30, act June 13, 1898, p. 286.

Permanent annual appropriations.

SEC. 3689. There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same respectively; and such appropriations shall be deemed permanent annual appropriations.

* * * * *

Refunding moneys erroneously received and covered:

To refund moneys received and covered into the Treasury before the payment of legal and just charges against the same.

* * * * *

Allowances and drawbacks, (internal revenue:)

Indefinite appropriation to pay allowance or drawback on articles on which any internal duty or tax shall have been paid when said articles are exported under the act of July one, eighteen hundred and sixty-two, chapter one hundred and nineteen [section three thousand four hundred and forty-one].

See as to appropriation to pay drawback on tobacco, section 3386, p. 253. No appropriation is made for paying drawback on stills allowable under act of March 1, 1879.

Refunding taxes illegally collected, (internal revenue:)

To refund and pay back duties erroneously or illegally assessed or collected under the internal-revenue laws.

Redemption of stamps, (internal revenue:)

Of such sum of money as may be necessary to repay the amount or value paid for internal-revenue stamps which may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or which through mistake may have been improperly or unnecessarily used.

* * * * *

Application of moneys appropriated.

SEC. 3678. All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.

No expenditures beyond appropriations.

SEC. 3679. No Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations.

By the act of July 7, 1884, deficiency appropriation act (23 Stat., 254), the Secretary of the Treasury is required to report to Congress at the commencement of each session amount due claimants upon claims allowed in whole or in part.

Unauthorized contracts prohibited.

SEC. 3732. No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law, or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

19 Op. Atty. Gen., 650..

Expenditure of balances of appropriations.

SEC. 3690. All balances of appropriations contained in the annual appropriation bills, and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes shall be carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations.

Unexpended balances of appropriations after two years to be covered into Treasury.

[3690a.] SEC. 5. *Act of June 20, 1874 (18 Stat., 110).* That from and after the first day of July, eighteen hundred and seventy-four, and of each year thereafter, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury:

Provided, That this provision shall not apply to permanent specific appropriations. * * *

Funds in the hands of disbursing officers. (15 Op. Atty. Gen., 357.)

Assignment of claims void, unless, etc.

SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgment of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

United States v. Gillis (95 U. S., 407); *Spofford v. Kirk* (97 U. S., 484); *McKnight v. United States* (98 U. S., 185); *Goodman v. Niblack* (102 U. S., 560; 11 Op. Atty. Gen., 520; 16 *id.*, 262); *Lopez v. United States* (35 Int. Rev. Rec., 31; 17 Op. Atty. Gen., 545).

Payment to attorney in fact holding unrevoked power of attorney executed prior to allowance of claim good as between the Government and claimant. (*Bailey et al. v. United States*, 109 U. S., 432; 29 Int. Rev. Rec., 420.)

This section does not apply to transfers by operation of law (*Erwin v. United States*, 97 U. S., 392; *Butler v. Goreley*, 146 U. S., 303).

Indorsement and payment of Treasury warrants. (See Dep. Cir. No. 194, Dec. 26, 1895.)

Assignment of claims—laws and decisions considered. (VI Comp. Dec., 101.)

Attorneys before the Treasury Department.

Act of July 7, 1884 (23 Stat., 258).—(Extract from the deficiency appropriation act.)

That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Secretary may, after due notice and opportunity for hearing, suspend and disbar from further practice before his Department any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

Drafts in payment of claims to be delivered to claimant, and not to attorneys. (32 Int. Rev. Rec., 325.)

Regulations governing attorneys and agents practicing before the Treasury Department. (Dep. Cir. No. 94, Oct. 14, 1890; 36 Int. Rev. Rec., 327.)

Duplicate checks authorized.

SEC. 3646. Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months, and within three years from the date of

such check, to issue a duplicate check; and the Treasurer, assistant treasurers, and designated depositaries of the United States are directed to pay such duplicate checks, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury shall prescribe. This section shall not apply to any check exceeding in amount the sum of one thousand dollars.

SEC. 3647. In case the disbursing officer or agent by whom such lost, destroyed, or stolen original check was issued, is dead, or no longer in the service of the United States, it shall be the duty of the proper accounting officer, under such regulations as the Secretary of the Treasury shall prescribe, to state an account in favor of the owner of such original check for the amount thereof, and to charge such amount to the account of such officer or agent.

Letters, packages, etc., on Government business sent free—Penalty envelopes.

SEC. 5. *Act of March 3, 1877 (19 Stat., 335).* That it shall be lawful to transmit through the mail free of postage any letters, packages, or other matters relating exclusively to the business of the Government of the United States: *Provided*, That every such letter or package, to entitle it to pass free, shall bear over the words "Official business" an endorsement showing also the name of the Department, and, if from a bureau or office, the names of the Department, and bureau or office, as the case may be, whence transmitted. And if any person shall make use of any such official envelope to avoid the payment of postage on his private letter, package, or other matter in the mail, the person so offending shall be deemed guilty of a misdemeanor, and subject to a fine of three hundred dollars, to be prosecuted in any court of competent jurisdiction.

SEC. 6. That for the purpose of carrying this act into effect, it shall be the duty of each of the Executive Departments of the United States, to provide for itself and its subordinate officers the necessary envelopes; and in addition to the endorsement designating the Department in which they are to be used, the penalty for the unlawful use of these envelopes shall be stated thereon.

15 Op. Atty. Gen., 262; 16 *ibid.*, 455.

Section 29 of the act of March 3, 1879 (20 Stat., 355), extends the provisions of the above act to all officers of the United States Government, and it is made applicable to all official mail matter transmitted between any of the officers of the United States, or between any such officer and either of the Executive Departments or officers of the Government, except to pension agents or other officers who receive a fixed allowance for their service, including expenses for postage. Includes United States Commissioners. (17 Op. Atty. Gen., 183.)

Abuse of official frank. (Circular letter, November 25, 1895; Int. Rev. Rec., 489.)

Unlawful use of penalty envelopes. (Circular No. 344; 36 Int. Rev. Rec., 149; 17 Op. Atty. Gen., 631.)

SEC. 2. *Act of March 3, 1883 (22 Stat., 563).* * * * And it shall be the duty of the respective Departments to inclose to Senators, Representatives, and Delegates in Congress, in all official communications requiring answers, or to be forwarded to others penalty envelopes addressed as far as practicable, for forwarding or answering such official correspondence.

Inclosing envelopes with return addresses. (Act of July 5, 1884 (23 Stat., 158.)

Franking privilege abolished. (Act of January 3, 1873 (17 Stat., 421.)

Government to have priority in transmission of telegrams.

SEC. 5266. Telegrams between the several Departments of the Government and their officers and agents, in their transmission over the lines of any telegraph company to which has been given the right of way, timber, or station lands from the public domain shall have priority over all other business, at such rates as the Postmaster-General shall annually fix. And no part of any appropriation for the several Departments of the Government shall be paid to any company which neglects or refuses to transmit such telegrams in accordance with the provisions of this section.

Instructions as to the use of the telegraph. (Circular March 21, 1889; 35 Int. Rev. Rec., 85.)

Official telegraphing. (Dep. Cir. No. 160, October 20, 1893.)

Concerning the use of telegraph. (Dep. Cir. No. 129, Int. Rev. 500, July 7, 1898; Vol 2, Treas. Dec., No. 19649.)

Government rates for telegraphing. (Dep. Cir. 107, August 18, 1899; Vol. 2, Treas. Dec., No. 21510.)

Telegrams of a personal character addressed to Office of the Commissioner of Internal Revenue must be prepaid. Where a response to such dispatches is required payment therefor must be provided for by the person in interest. (Vol. 1, Treas. Dec. (1898), No. 19221.)

Disposition of useless papers.

[Extract from sundry civil appropriation act of March 2, 1895 (28 Stat., 910).]

[Par. 7.] That the Act entitled "An Act to authorize and provide for the disposition of useless papers in the Executive Department," approved February sixteenth, eighteen hundred and eighty-nine, be, and the same is hereby, amended so as to include in its provisions any accumulation of files of papers of a like character therein described now or hereafter in the various public buildings under the control of the several Executive Departments of the Government.

An act to authorize and provide for the disposition of useless papers in the Executive Departments. Approved February 16, 1889 (25 Stat., 672), (35 Int. Rev. Rec., 62; 1 Sup. R. S., 644).

CHAPTER 6.

OFFICERS, CLERKS, AND EMPLOYEES—EXTRA SERVICES—HOLDING TWO OFFICES—PROHIBITION AS TO BUSINESS—PENALTY FOR PROSECUTING CLAIMS AGAINST THE GOVERNMENT—PERQUISITES—FEES—POLITICAL CONTRIBUTIONS—PRESENTS TO SUPERIORS, ETC.

President authorized to prescribe regulations.

SEC. 1753. The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.

Preference of persons disabled in military or naval service.

SEC. 1754. Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness in-

curred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices.

Not repealed by the civil-service act. (§ 7, act Jan. 16, 1883. (22 Stat., 403.)

Transfer of duties and preference of soldiers' and sailors' widows.

SEC. 3. *Act of August 15, 1876. (19 Stat., 169.)* That whenever, in the judgment of the head of any department, the duties assigned to a clerk of one class can be as well performed by a clerk of a lower class or by a female clerk, it shall be lawful for him to diminish the number of clerks of the higher grade and increase the number of the clerks of the lower grade within the limit of the total appropriation for such clerical service: *Provided*, That in making any reduction of force in any of the executive departments, the head of such department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors.

Employees to be paid from specific appropriations only—Civil officers, clerks, etc., elsewhere employed not to be detailed for duty in the District of Columbia.

[Extract from legislative, executive, and judicial appropriation act, approved August 5, 1882. (22 Stat., 255.)]

SEC. 4. That no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall after the first day of October next be employed in any of the executive departments, or subordinate bureaus or offices thereof at the seat of government, except only at such rates and in such numbers, respectively, as may be specifically appropriated for by Congress for such clerical and other personal services for each fiscal year; and no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer or other employee shall hereafter be employed at the seat of Government in any executive department or subordinate bureau or office thereof, or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made, and at the rate of compensation usual and proper for such services, and after the first day of October next, section one hundred and seventy-two of the Revised Statutes, and all other laws and parts of laws, inconsistent with the provisions of this act, and all laws and parts of laws authorizing the employment of officers, clerks, draughtsmen, copyists, messengers, assistant messengers, mechanics, watchmen, laborers or other employees at a different rate of pay or in excess of the numbers authorized by appropriations made by Congress, be, and they are hereby, repealed; and thereafter all details of civil officers, clerks, or other subordinate employees from places outside of the District of Columbia for duty within the District of Columbia, except temporary details for duty connected with their respective offices, be, and are hereby, prohibited; and thereafter all moneys accruing from lapsed salaries or from unused appropriations for salaries, shall be covered into the Treasury: *Provided*, That the sums herein specifically appropriated for clerical or other force heretofore paid for out of general or specific appropriations may be used by the several heads of departments to pay such force

until the said several heads of departments shall have adjusted the said force in accordance with the provisions of this act; and such adjustment shall be effected before October first, eighteen hundred and eighty-two. And in making such adjustment the employees herein provided for shall, as far as may be consistent with the interests of the service, be apportioned among the several States and Territories according to population: *Provided, further*, That any person performing duty in any capacity as officer, clerk, or otherwise in any department at the date of the passage of this act, who has heretofore been paid from any appropriation made for contingent expenses or for any contingent or general purpose, and whose office or place is specifically provided for herein, under the direction of the head of that department may be continued in such office, clerkship, or employment without a new appointment thereto, but shall be charged to the quotas of the several States and Territories from which they are respectively appointed and nothing herein shall be construed to repeal or modify section one hundred and sixty-six of the Revised Statutes of the United States.

Sec. 166, R. S., amended by sec. 3, act of May 28, 1896 (29 Stat., 179), allowing temporary detail of clerks.

It is provided in the same act (22 Stat., 230) that nothing in this section shall be construed to prevent the Commissioner of Internal Revenue from detailing one revenue agent for duty in his office.

Clerks can not be detailed to examine collectors' offices. (Collins' case, 3 Lawrence Dec., 241; 29 Int. Rev. Rec., 43.)

When Congress appropriates a sum "in full compensation" of the salary of a public officer, the incumbent can not recover an additional sum in the Court of Claims, notwithstanding a prior statute fixes the salary at a larger amount than the sum so appropriated. (*United States v. Fisher*, 109 U. S., 143.)

No salary for office not authorized.

SEC. 1760. No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law.

Officers prohibited from accepting services where there has been no appropriation made.

[SEC. 1760*a*.] *Act of May 1, 1884. (23 Stat., 17.) Urgent deficiency appropriation act.*
 * * * And hereafter no Department or officer of the United States shall accept voluntary service for the Government, or employ personal service in excess of that authorized by law except in cases of sudden emergency involving the loss of human life or the destruction of property.

Public holidays.

SEC. 993. *Revised Statutes relating to District of Columbia.* The following days, namely: The first day of January, commonly called New Year's day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas day; and any day appointed or recommended by the President of the United States as a day of public fast or thanksgiving, shall be holidays within the District.

* * * * *

The 22d of February made a holiday. (Act of January 31, 1879. (20 Stat., 277.)

Inauguration Day made a holiday. (Act of June 18, 1888. (25 Stat., 185.)

"Decoration Day" made a holiday. (Act of August 1, 1888. (25 Stat., 353.)

The first Monday in September (Labor's Holiday) made a holiday. (Act of June 28, 1894.)

Legal holidays falling on Sunday the next day shall be a holiday. (Act of December 20, 1881. (22 Stat., 1.)

As to ministerial acts performed on Sunday and holidays, see *In re Worthington* (23 Int. Rev. Rec., 233).

Per diem employees of the Government to receive pay for certain holidays.

Joint resolution of January 6, 1885 (23 Stat., 516).

Resolved, etc., That the employees of the navy-yard, Government Printing Office, Bureau of Printing and Engraving, and all other per diem employees of the Government on duty at Washington, or elsewhere in the United States, shall be allowed the following holidays, to wit: The first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, and such days as may be designated by the President as days for national thanksgiving, and shall receive the same pay as on other days.

Joint resolution of February 23, 1887 (24 Stat., 644).

Resolved, etc., That all per diem employees of the Government, on duty at Washington or elsewhere in the United States, shall be allowed the day of each year which is celebrated as "Memorial" or "Decoration Day," and the fourth of July of each year, as holiday, and shall receive the same pay as on other days.

Double salaries—Compensation for extra services—Extra allowances—Perquisites, etc.—Prohibition.

SEC. 1763. No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

Talbot's case (10 Ct. Clms., 426).

The statutes do not prohibit a person from drawing the salaries of two distinct offices which he legitimately holds. (5 Op. Atty. Gen., 765; 6 *ibid.*, 80; 9 *ibid.*, 507; 10 *ibid.*, 446; 15 *ibid.*, 306; 16 *ibid.*, 7.) Collins v. United States (15 Ct. Clms., 22).

In construing statutes restraining the Executive from giving full or extra compensation courts have aimed to carry out the legislative intent by giving them sufficient flexibility not to injure the public service and sufficient rigidity to prevent Executive abuse. (Landram v. United States (1880), 16 Ct. Clms., 74; 27 Int. Rev. Rec., 80.)

No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law, but this shall not apply to retired officers of the Army or Navy. (See § 2, act of July 31, 1894. (28 Stat., 205.)

SEC. 1764. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

Section 170 prohibits payment to Department clerks for extra services unless authorized by law.

An agreement by the Secretary of the Interior to pay a clerk in his Department for services rendered to the Government by labors abroad, the clerk still holding his place and drawing his pay as clerk in the Interior held void. Stansbury v. United States (8 Wall., 33).

See also disbursing clerk's case (5 Lawrence Dec., 401); Wade's case (27 Int. Rev. Rec., 16); Herndon's claim (26 *ibid.*, 314).

SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any

other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

The construction which has been given to these statutes (§§ 1763, 1764, 1765) is that the intent and effect of them is to forbid officers holding one office to receive compensation for the discharge of duties belonging to another, or additional pay, extra allowance, or compensation for such other services or duties where they hold the commission of but a single office, and by virtue of that office, or in addition to the duties of that office, have assigned to them the duties of another office. According to the decisions, however, if an officer holds two distinct commissions, and thus two distinct offices, he may receive the salary for each. *Converse v. United States*, leading case on questions of additional compensation (21 Howard, 463; 15 Op. Atty. Gen., 308, 608). *United States v. Brindle* (110 U. S., 689). *Hartson v. United States* (21 Ct. Clms., 451; 32 Int. Rev. Rec., 238). In this case the Supreme Court went further than it had gone in any previous decision and held that where a person holds two separate employments, though not technically offices, he is entitled to the compensation of both. *Saunders v. United States* (120 U. S., 126; 33 Int. Rev. Rec., 63); *Collins case* (15 Ct. Clms., 22); *Whitaker v. United States* (27 Ct. Clms., 524; 43 Int. Rev. Rec., 193).

Deputy marshal not an "officer," and can be paid for services in assisting the collector in destroying illicit stills. (*Brown's case*, 28 Int. Rev. Rec., 19.)

Deputy collector not an "officer" within the meaning of section 1765. (*Landram v. United States*, 16 Ct. Clms., 74; 27 Int. Rev. Rec., 80.)

Officers can not charge fee for making out bonds. (43 Int. Rev. Rec., 193.)

[SEC. 1765a.] *Section 3, act of March 20, 1874 (18 Stat., 109); 1 Sup. R. S., 47.* That no civil officer of the Government shall hereafter receive any compensation or perquisites, directly or indirectly, from the Treasury or property of the United States beyond his salary or compensation allowed by law:

Provided, That this shall not be construed to prevent the employment and payment by the Department of Justice of district attorneys as now allowed by law for the performance of services not covered by their salaries or fees.

This act relates only to "civil officers." It does not extend to the clerk of a supervisor of internal revenue. (*Hedrick v. United States*, 16 Ct. Clms., 88.)

Payment of expenses of clerks, officers, etc., sent away as witnesses.

SEC. 850. When any clerk or other officer of the United States is sent away from his place of business as a witness for the Government, his necessary expenses, stated in items and sworn to, in going, returning, and attendance on the court, shall be audited and paid; but no mileage, or other compensation in addition to his salary, shall in any case be allowed.

Expenses can be taxed in the bill of costs for the travel or attendance of Government clerks. (*United States v. Sanborn*, 135 U. S., 271; 36 Int. Rev. Rec., 142.)

Deputy collectors are included under the words "other officer of the United States" according to the ruling of the Department.

Section 850, as construed by the Department of Justice. (Instructions to United States marshals, attorneys, clerks, and commissioners, January 1, 1899, par. 603-607, pp. 93, 94.)

No mileage beyond traveling expenses allowed.

[Extract from the Army appropriation act for the fiscal year ending June 30, 1875. Act of June 16, 1874. (18 Stat., 72.)]

* * * *Provided*, That only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States, and all allowances for mileages and transportation in excess of the amount actually paid are hereby declared illegal; and no

credit shall be allowed to any of the disbursing officers of the United States for payment or allowances in violation of this provision. * * *

The above provision does not apply to district attorneys, marshals, clerks of courts, and their deputies and assistants. (Act February 22, 1875 (18 Stat., 334); act March 3, 1875, (18 Stat., 452.)

By the act of June 30, 1876 (19 Stat., 65), so much of the act as applied to Navy officers was repealed and mileage was allowed.

Army officers allowed mileage. (Act July 24, 1876 (19 Stat., 100.)

Certain business and emoluments forbidden to clerks in the Treasury Department.

SEC. 244. Every clerk employed in the Treasury Department who carries on any trade or business in the funds or debts of the United States, or of any State, or in any kind of public property, or who takes or applies to his own use any emolument or gain for negotiating or transacting any business in the Department, shall be deemed guilty of a misdemeanor, and punished by a fine of five hundred dollars and removal from office.

Sections 1788, 1789, pp. 384 and 385.

Officers and clerks receiving compensation in matters before the Departments; penalty.

SEC. 1782. No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department, or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, Bureau, officer, or any civil, military, or naval commission whatever.

Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years, and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States.

Contracts with the Government by executive officers. (14 Op. Atty. Gen., 482.)

Prohibition against officers taking money or other valuable consideration for procuring places or contracts. (§ 1781.)

Officers and employees of Internal Revenue Bureau prohibited from acting as agents for surety companies. (Vol. I, Treas. Dec. (1899), No. 21025.)

Act of February 25, 1897 (29 Stat., 595). To prevent the purchasing of or speculating in claims against the Federal Government by United States officers.

Officers prosecuting claims against the United States; penalty.

SEC. 5498. Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of

having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both.

Persons formerly in the Departments not to prosecute claims in them within two years.

SEC. 190. It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employé in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employé, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employé.

See 20 Op. Atty. Gen., 696.

Restriction on payment for services; oath to be required.

SEC. 1790. No officer or clerk whose duty it is to make payments on account of the salary or wages of any officer or person employed in connection with the customs or the internal-revenue service, shall make any payment to any officer or person so employed on account of services rendered, or of salary, unless such officer or person so to be paid has made and subscribed an oath that, during the period for which he is to receive pay, neither he, nor any member of his family, has received, either personally or by the intervention of another party, any money or compensation of any description whatever, nor any promises for the same, either directly or indirectly, for services rendered or to be rendered, or acts performed or to be performed, in connection with the customs or internal revenue; or has purchased, for like services or acts, from any importer, if affiant is connected with the customs, or manufacturer, if affiant is connected with the internal-revenue service, consignee, agent, or custom-house broker, or other person whomsoever, any merchandise, at less than regular retail market prices therefor.

Accounts for services of clerks, etc., must be verified.

SEC. 2693. No account for the compensation for services of any clerk, or other person employed in any duties in relation to the collection of the revenue, shall be allowed, until such clerk or other person shall have certified, on oath, that the same services have been performed, that he has received the full sum therein charged to his own use and benefit, and that he has not paid, deposited, or assigned, or contracted to pay, deposit, or assign, any part of such compensation to the use of any other person, or in any other way, directly or indirectly, paid or given, or contracted to pay or give, any reward or compensation for his office or employment, or the emoluments thereof.

Prohibition of contributions, presents, etc., to official superiors.

SEC. 1784. No officer, clerk, or employé in the United States Government employ shall at any time solicit contributions from other officers, clerks, or employés in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any

donation as a gift or present to any official superior. Every person who violates this section shall be summarily discharged from the Government employ.

Penalty for officers and employees giving to or receiving from other officers money, etc., for political purposes.

SEC. 6. *Act of August 15, 1876 (19 Stat., 169).* That all executive officers or employees of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employee of the Government any money or property or other thing of value for political purposes; and any such officer or employee who shall offend against the provisions of this section shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars.

This act not unconstitutional. (*United States v. Curtis*, 28 Int. Rev. Rec., 273; *Ex parte Curtis*, 106 U. S., 371; 29 Int. Rev. Rec., 18.)

Members of Congress not included. (17 Op. Atty. Gen., 419.)

The civil-service act [act of January 16, 1883 (22 Stat., 403)] makes political assessments of Federal officers, clerks, and employees a misdemeanor. The following are the provisions of the law on the subject:

SEC. 2, par. 2, clause 5. That no person in the public service is for that reason under any obligation to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Sixth. That no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

* * * * *

SEC. 11. That no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said Houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

SEC. 12. That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever.

SEC. 13. No officer or employee of the United States mentioned in this act shall discharge or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

SEC. 14. That no officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

SEC. 15. That any person who shall be guilty of violating any provision of the four foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by such fine and imprisonment both, in the discretion of the court.

Official interference in political movements. (Order of President Cleveland, Dept. Cir. No. 17, Sept. 1, 1886.)

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